

No. 24-6697

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

COURTHOUSE NEWS SERVICE,

Plaintiff-Appellee,

v.

SARA OMUNDSON,

Defendant-Appellant.

Appeal from the United States District Court for the District of Idaho,
Case No. 1:21-CV-00305-DCN, the Honorable David C. Nye, Presiding

EXCERPTS OF RECORD, VOL. 11

Keely E. Duke
Molly E. Mitchell
Duke Evett, PLLC
1087 West River Street, Suite 300,
Boise, ID 83702
Telephone (208) 342-3310
Email: ked@dukeevett.com; mem@dukeevett.com

Attorneys for Appellant Sara Omundson

Exhibit B

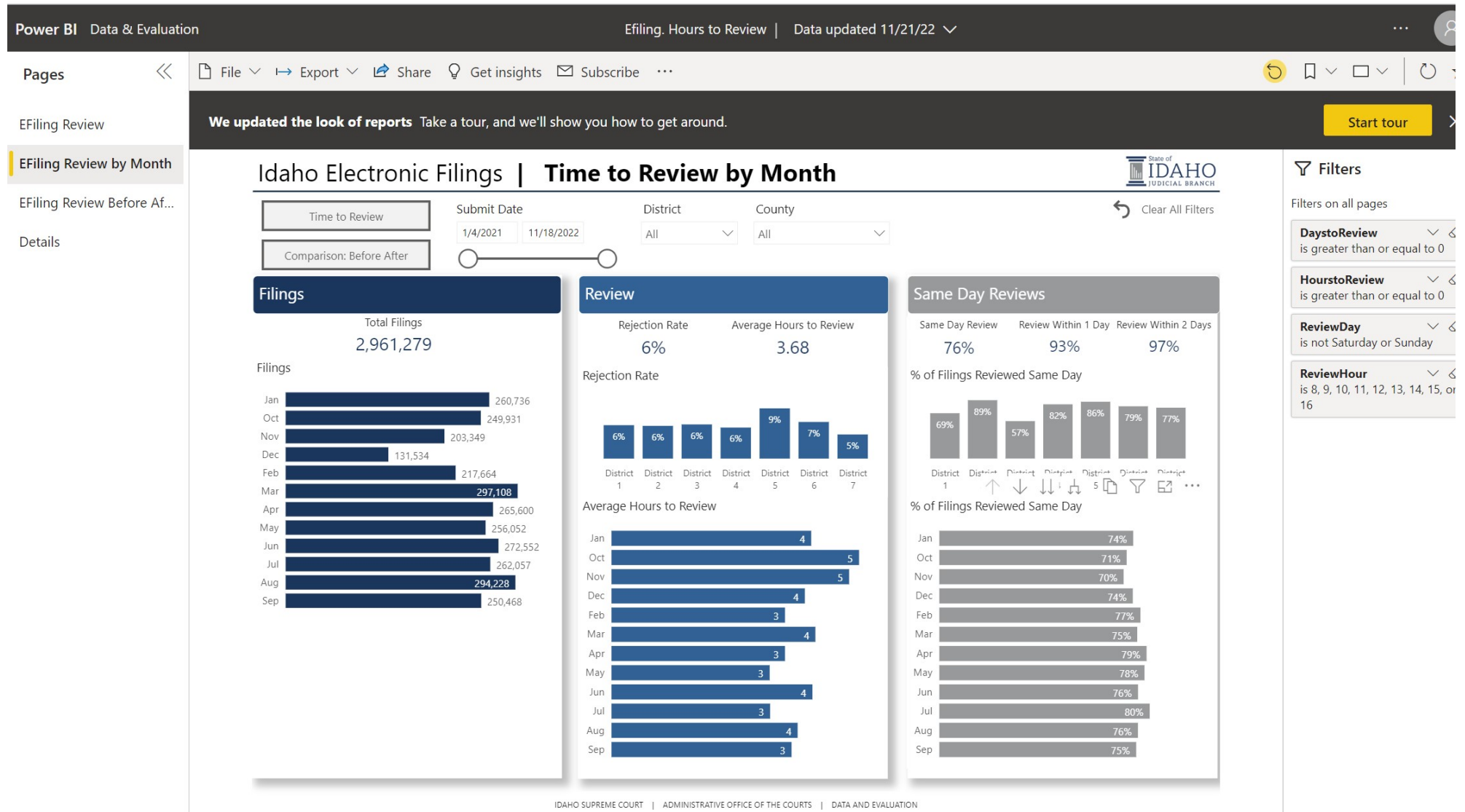


Exhibit C

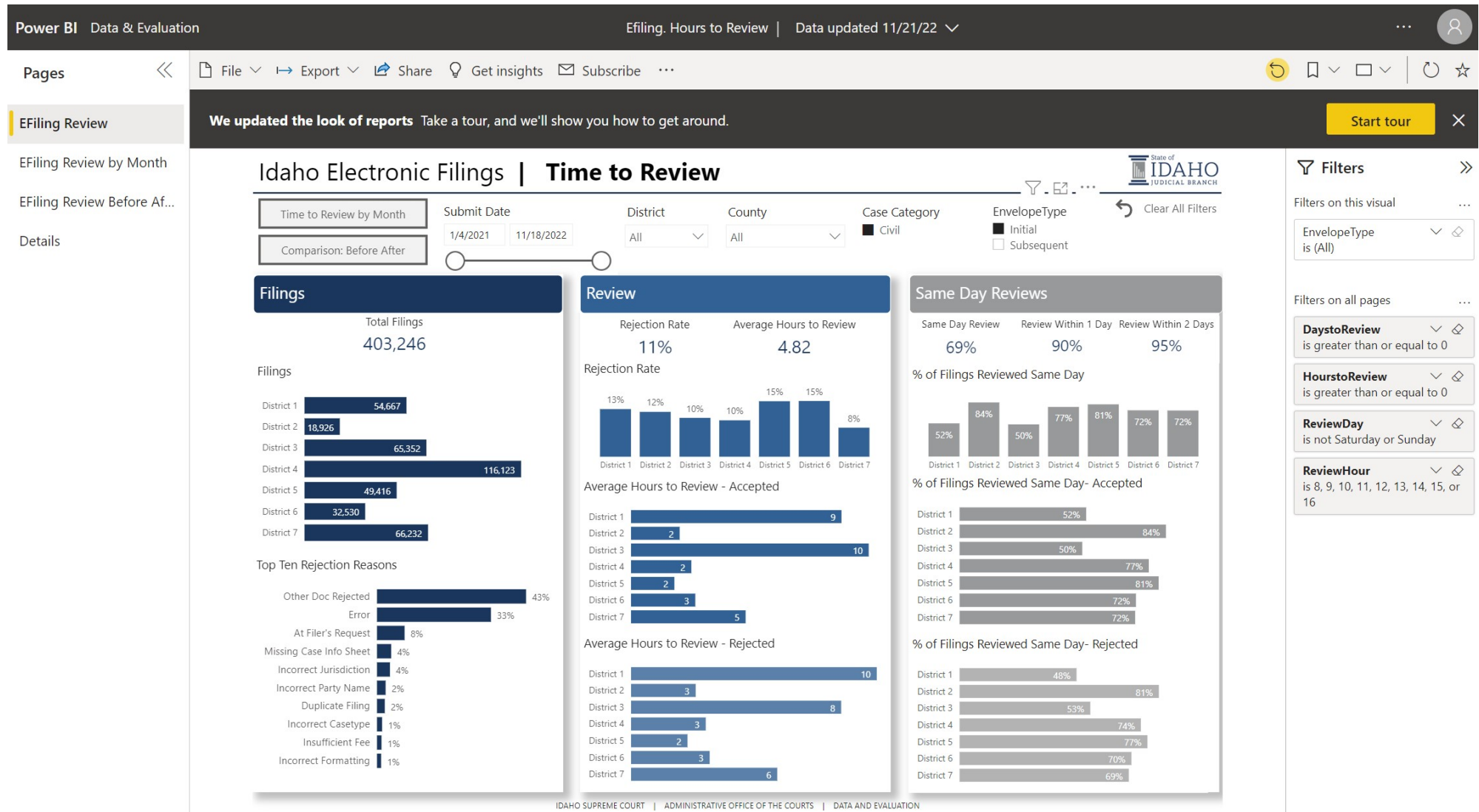


Exhibit D

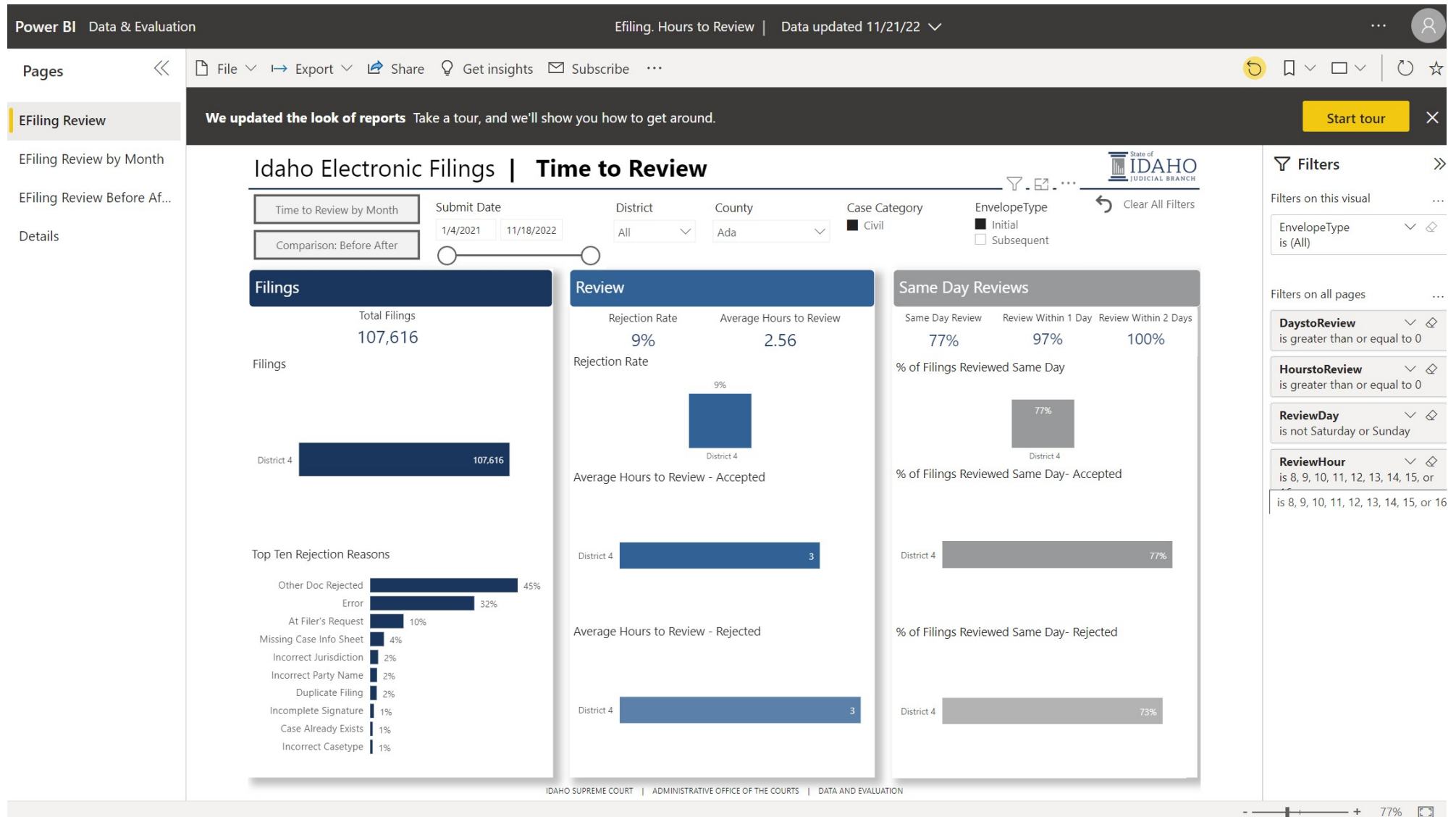


Exhibit E

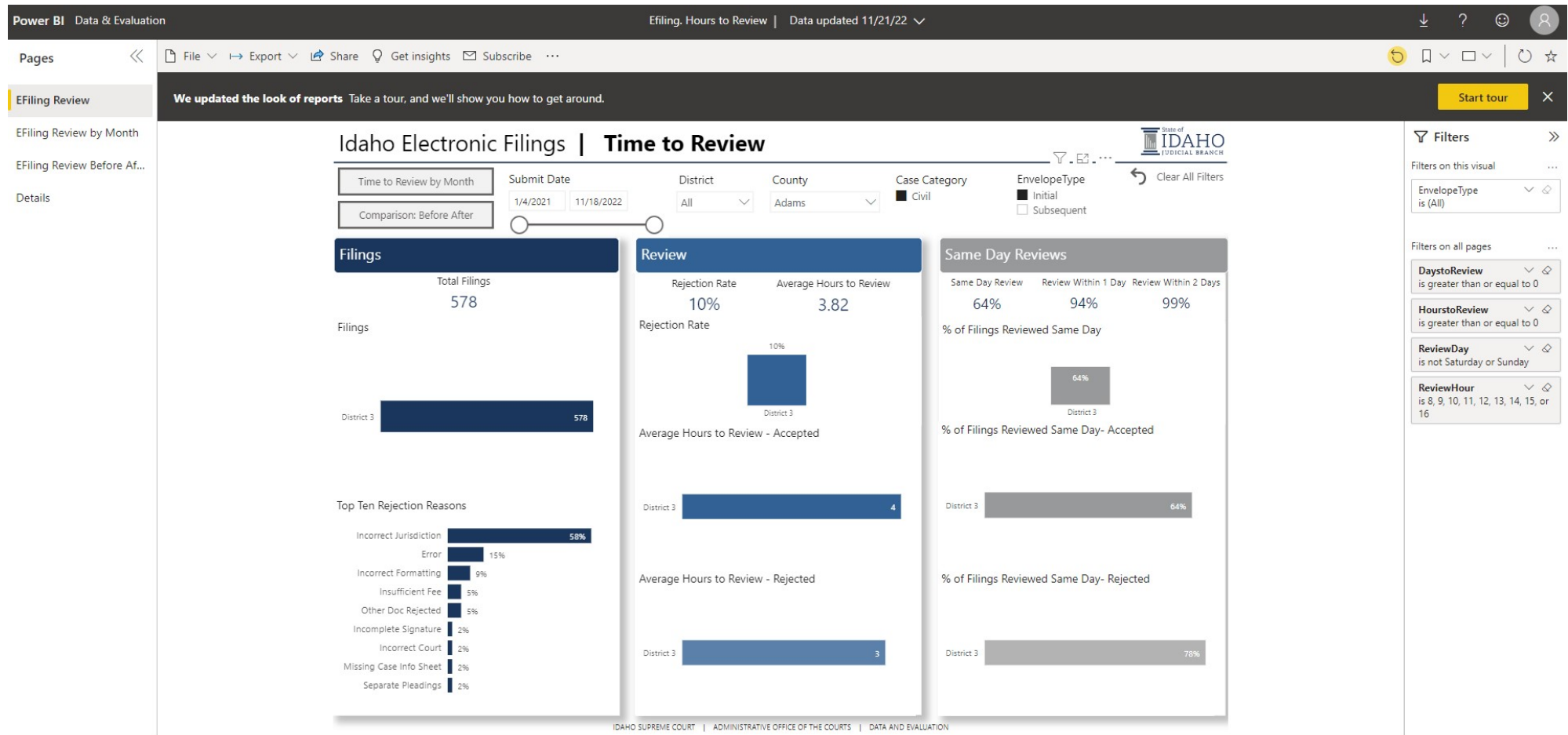


Exhibit F

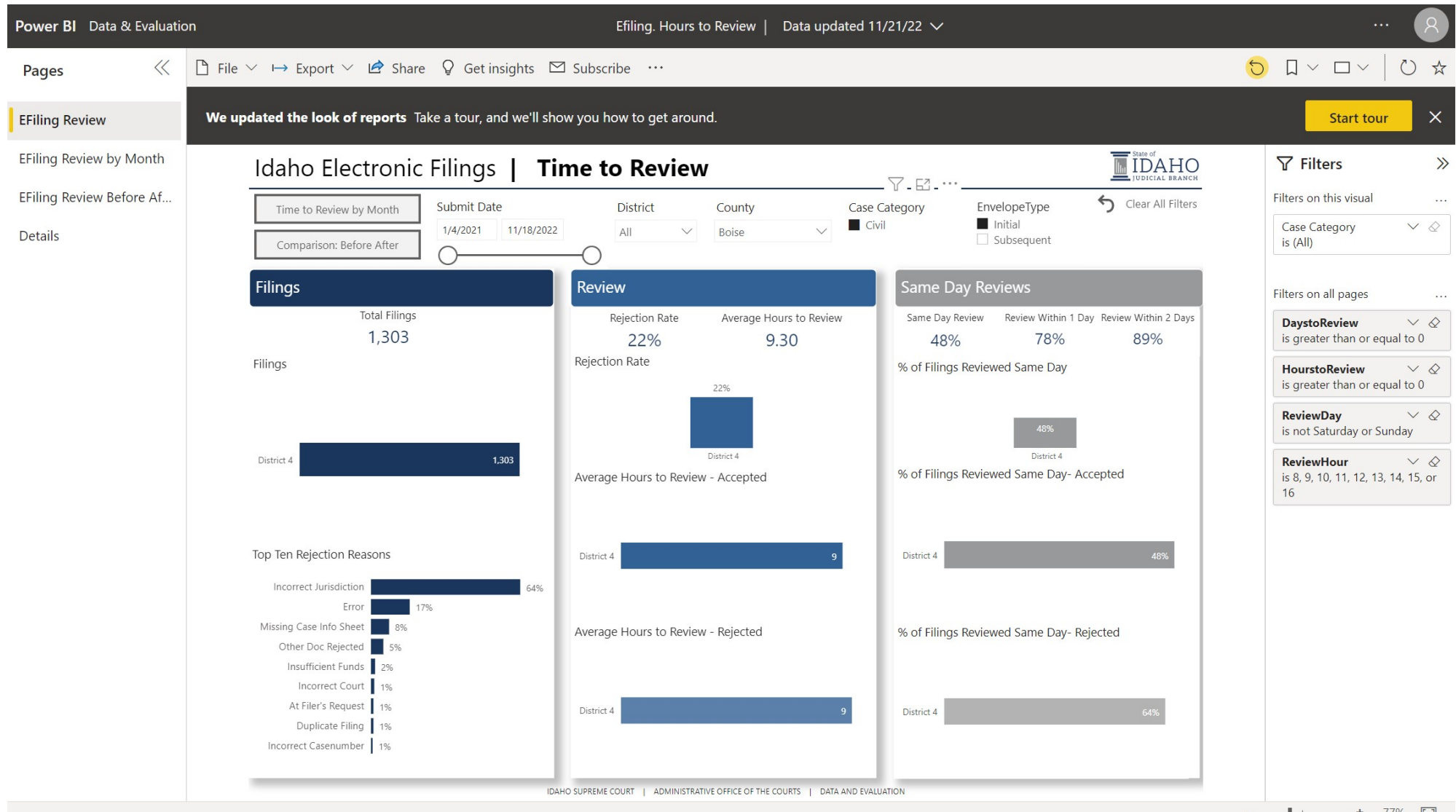
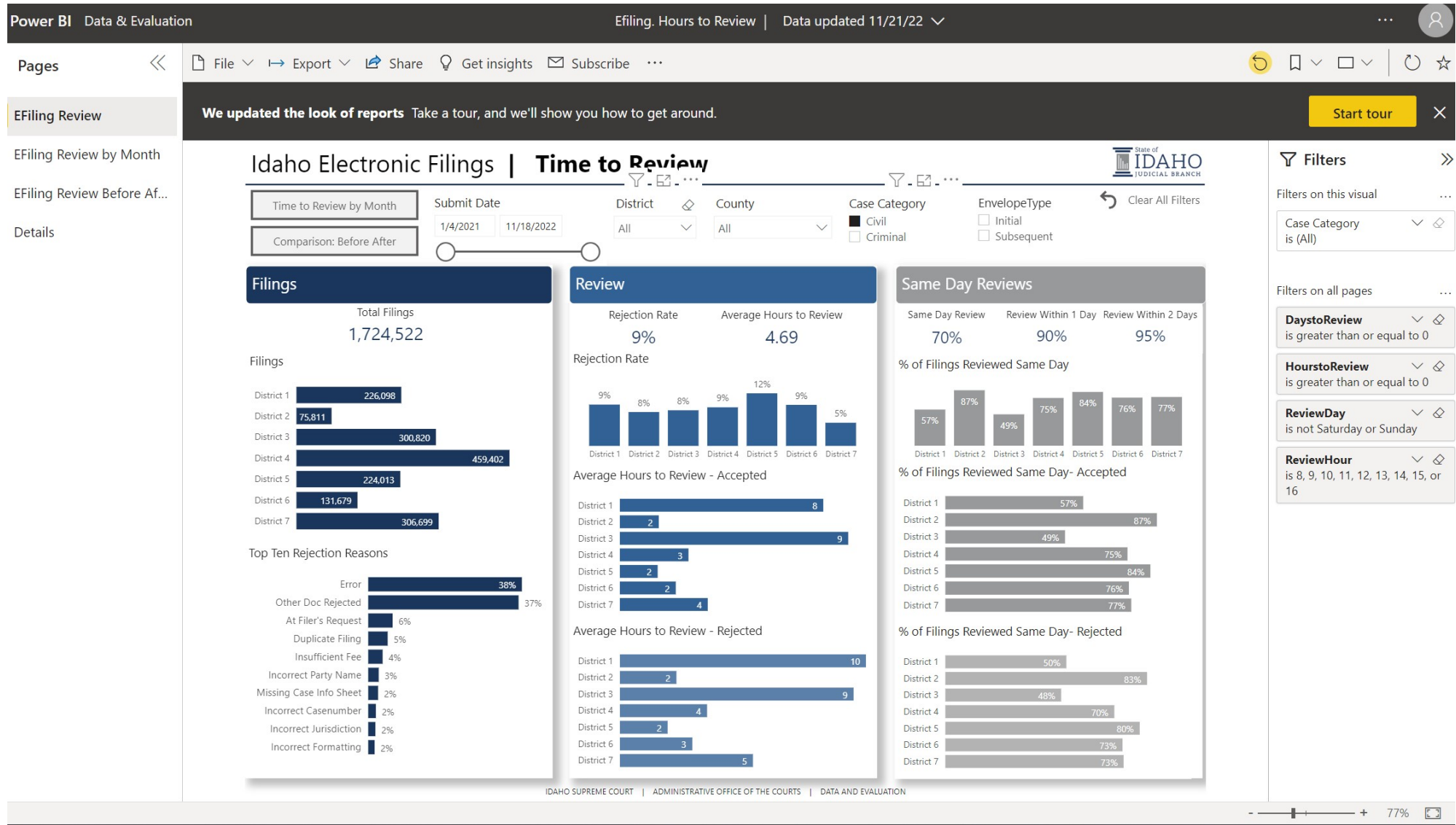


Exhibit G

ER-2423



Keely E. Duke
ISB #6044; ked@dukeevett.com
Molly E. Mitchell
ISB#10035; mem@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

**DECLARATION OF THE
HONORABLE MITCHELL W.
BROWN**

I, the Honorable Mitchell W. Brown, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.

2. I have served in the capacity of a District Judge for the State of Idaho's Sixth Judicial District since 2008. As a District Judge, I have jurisdiction over civil and criminal cases.

3. As a District Judge, I am aware that each county Clerk's Office is responsible for reviewing filings submitted through File & Serve, which is a software platform available to the public. Once documents arrive in File & Serve, clerks perform a ministerial review of the filings to ensure they meet the requirements established by the Idaho Supreme Court to enter the court

DECLARATION OF THE HONORABLE MITCHELL W. BROWN- 1

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system as official records. This includes confirming, if applicable, the correct filing fee has been paid, the necessary signatures are included, the case is being submitted in the appropriate jurisdiction, and that the submitted document indicates the correct court, e.g. district court or the magistrate division. If the ministerial aspects of the filing are correct, the Clerk's Office accepts the document for filing, a file stamp is affixed and the filing is transferred to Case Manager, which houses the official dockets of each county court. Once in Case Manager, an accepted document is filed as part of the official court record. The District Judges do not participate in this process, with the exception of whether to grant filing fee waiver applications submitted under Idaho Rule of Civil Procedure 10.1.

4. This configuration is consistent with the access the press and public had prior to the transition to e-filing. In the days of paper filings, the clerk would perform a ministerial review of the document before accepting it, file-stamping it, and placing it in the case file. At that point, the document was a public record and could be immediately reviewed by the press or public upon request. Idaho Courts kept the administrative function of clerk review prior to acceptance as they transitioned to e-filing.

5. I understand that in this lawsuit, CNS claims Sara Omundson, in her official capacity as Administrator Director of Idaho Court, should be compelled to either enable Tyler's Auto Accept function or implement a Press Review Queue. Either option would provide CNS with immediate access to newly submitted civil filings before they have been reviewed or accepted for filing by a county clerk.

6. Under Auto Accept, the filing would immediately be part of the official record even if the applicable filing fee had not been paid or there were other errors with the submission, such as filing in the wrong jurisdiction. Judicial action would be required to address improperly

submitted documents that are automatically accepted into the case management system.

7. Auto Accept would create backlogs and additional issues and work for the clerks. Using the same process as was in place with paper filing, the clerks review newly submitted documents before accepting them as an official court record (e.g. to make sure the complaint is filed in the correct county and proper filing fee has been submitted). When filings are in File & Serve, clerks can communicate directly with the submitter about issues with the submission. Once a document is transferred from File & Serve into Case Manager, there is no ability to communicate directly with the submitter through the Tyler portal; the clerk or court staff would have to call or email the party regarding an error with the submission. In addition, all documents come in the same envelope (e.g. a complaint, summons, and case information sheet). Once the documents in the envelope are accepted for filing, they are transferred into Case Manager. Once in Case Manager, the documents are no longer kept together in an envelope, meaning clerks would have to access each document included in an improper submission individually in order to correct mistakes with the submission. Thus, Auto Accept would significantly increase the workload of the clerks because it eliminates their ability to communicate directly with the submitter through the Tyler portal and easily access all documents included in a submission. This change in process, while minimal in a single transaction, increases exponentially with the number of filings.

8. Auto Accept would also increase the already full workload of District Judges and their court staff because they would have to spend time addressing improperly submitted complaints that would have been resolved by the clerks under our current system. For example, a judge may have to enter a notice of intent to dismiss if there is an error with a filing that was automatically submitted into Case Manager. Because complaints in Case Manager are official court records, a judicial order of some sort would be required to take any action in response to an

improperly submitted complaint that was automatically accepted. This would dramatically increase the workload of judges since they would be tasked with ministerial functions that would otherwise be handled by the clerk.

9. For decades, and long before the transition to e-filing, clerks have served as gatekeepers for improperly submitted documents. Auto Accept would effectively eliminate this gatekeeping function that benefits litigants, District Judges, Magistrate Judges, their staff, and the clerks. Eliminating this gatekeeping function could be extremely detrimental to litigants. Under the current process, a litigant has three days to correct a defect with a filing if it is rejected by the Clerk's Office and the date of the original submission will still appear as the file-stamped date as the filing date relates back to the date of original submission. *See* Idaho Rule for Electronic Filing and Service 13. With Auto Accept, an issue with a submitted complaint may go unnoticed for a substantial period of time. If a litigant files their complaint close to the expiration of the statute of limitations, they could be barred from pursuing the claim if their complaint had a filing error that was not addressed as part of the historical ministerial review process.

10. Another concern with Auto Accept is that filings can include sensitive or confidential information. Because there is no clerk review to address these concerns with Auto Accept, Idaho Courts would be publishing documents as official court records that contain confidential or sensitive information or that should otherwise not be made available to the public. Public access to such information before it can be reviewed and sanitized, if necessary, would erode public confidence in the courts and its ability to be trusted with confidential and sensitive information.

11. The Press Review Queue would provide members of the press and public with access to newly submitted filings before they are reviewed and accepted by the Clerk's Office.

12. The Press Review Queue is concerning to me because it provides the press and public with access to newly submitted civil filings before the Clerk's Office reviews and accepts them. This means the press and public have access to newly submitted complaints and other civil filings before the presiding judges and their staff have access to them. It is counterintuitive to provide the press and public with access to documents that are *not* official court records and that presiding judges do not even have access to. District Judges cannot take any action on documents that are not part of the official court record, so providing the press and public with access to filings that have not been accepted serves no purpose in informing the press and public about how the courts are functioning; the jurisdiction of the Idaho Courts is not invoked until the complaint becomes an official court record.

13. I am also concerned about the implicit representation that a document in the Press Review Queue has been filed or is otherwise an official court document. Members of the press and public may not understand such documents have not been reviewed or accepted by clerks and will not become part of the record if they are rejected. This could result in the press and/or members of the public reporting on filings available in the Press Review Queue as if they are official court documents, when in reality a filing in the Press Review Queue is not an official court document because it has not been reviewed and accepted for filing. This could erode public confidence in the judiciary if members of the press and public report on filings in the Press Review Queue before they are accepted as official court records.

14. Providing the press and public with access to documents that have not been reviewed and accepted is also dangerous because an individual could inadvertently or maliciously submit a filing that includes confidential information, such as social security numbers, birthdates, bank account information, etc. That information will be available to the press and public during

the entire time the filing sits in the Press Review Queue prior to review and acceptance as an official court record. Further, filing errors could result in cases and or specific pleadings subject to protection orders or other restrictions on being made public.

15. I understand the importance of providing the public and press with timely access to newly submitted civil complaints and am a staunch advocate of First Amendment Rights. However, the Sixth Judicial District also needs to ensure that litigants' rights are protected. This includes ensuring that civil filings are reviewed by clerks so any filing errors can be timely addressed. This also includes ensuring that individuals' personal information is not made available to the press and public. Providing CNS with *immediate* access to newly submitted civil complaints and civil filings via Auto Accept or the Press Review Queue substantially impairs the Sixth Judicial District's ability to serve and protect the individuals who access the court system.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 13th day of December, 2022.

A handwritten signature in black ink, reading "Mitchell W. Brown", written over a horizontal line.

Mitchell W. Brown
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina
Katherine A. Keating
Jonathan G. Fetterly

amberdina@givenspursley.com
katherin.keating@bclplaw
jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukeevett.com
Molly E. Mitchell
ISB#10035; mem@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

**DECLARATION OF THE
HONORABLE ERIC WILDMAN**

I, the Honorable Eric Wildman, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.

2. I serve as District Judge for the State of Idaho's Fifth Judicial District. As a District Judge, I have jurisdiction over civil and criminal cases.

3. I also serve as the Administrative District Judge (ADJ) for the Fifth Judicial District. As the ADJ, I have administrative supervision and authority over the operating of the district courts and magistrate courts in the Fifth Judicial District.

4. As a District Judge and ADJ, I am aware that each county Clerk's Office is

DECLARATION OF THE HONORABLE ERIC WILDMAN- 1

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responsible for reviewing filings submitted through File & Serve, which is a software platform available to the public. Once documents arrive in File & Serve, clerks perform a ministerial review of the filings to ensure they meet the requirements established by the Idaho Supreme Court to enter the court system as official records. This includes confirming, if applicable, the correct filing fee has been paid, the necessary signatures are included, the case is being submitted in the appropriate jurisdiction, and that the submitted document indicates the correct court division, e.g. magistrate or district court. If the ministerial aspects of the filing are correct, the Clerk's Office accepts the document for filing and the filing is transferred to Case Manager, which houses the official dockets of each county court. Once in Case Manager, an accepted complaint is filed as part of the official court record. The District Judges do not participate in this process, with the exception of whether to grant filing fee waiver applications submitted under Idaho Rule of Civil Procedure 10.1.

5. I understand that in this lawsuit, CNS claims Sara Omundson, in her official capacity as Administrator Director of Idaho Courts, should be compelled to either enable Tyler's Auto Accept function or implement a Press Review Queue. Either option would provide CNS with immediate access to newly submitted civil complaints before they have been reviewed or accepted for filing by a county clerk.

6. I served on the Idaho Supreme Court's Technology Committee when Idaho Courts decided to make the transition to paperless filing. The Idaho Supreme Court hired consultants to help with the transition to e-filing. We were looking for an "off the shelf" case management system, and the Odyssey system from Tyler was the closest option. The issue of turning on Auto Accept or implementing a Press Review Queue came up and was discussed extensively by the committee in conjunction with the consultants. At first blush, Auto Accept seemed like a viable option because we thought this would save time and money. Historically, clerks would review

paper submissions and accept or reject them before they became part of the docket. Neither the press nor the public was provided with access to paper submissions before they had been reviewed and accepted for filing. The elected clerks explained all the reasons why they would have to reject paper submissions and further explained that if an error is not corrected on the front end, it takes a lot of work to correct errors once a submission has been accepted for filing. This topic was discussed, debated, and voted on. We specifically considered press and public access to newly submitted documents. Ultimately, the committee made a recommendation to the Idaho Supreme Court that the clerks continue to review submissions and accept or reject them for filing before they are filtered into Case Manager, at which time they are available to the public and press.

7. Under Auto Accept, the complaint would immediately be part of the official record even if the applicable filing fee had not been paid or there were other errors with the submission, such as filing in the wrong jurisdiction.

8. Judicial action would be required to address improperly submitted documents that are automatically accepted into the case management system. This would include preparing orders and conducting hearings to strike improperly submitted complaints, otherwise remove them from the case management system, or redact filings already in the case file. This is inefficient and would increase the workload of District Judges, their court staff, and clerks.

9. Clerks serve as gatekeepers for improperly submitted documents. Auto Accept would effectively eliminate this gatekeeping function that benefits litigants, District Judges, their staff, and the clerks. Eliminating this gatekeeping function could be extremely detrimental to litigants. Under the current process, a litigant has three days to correct a defect with a complaint if it is rejected by the Clerk's Office and the date of the original submission will still appear as the file-stamped date. *See* Idaho Rule for Electronic Filing and Service 13. With Auto Accept, an issue

with a submitted complaint may go unnoticed for a substantial period of time; filing issues will only be addressed if they are brought to the District Court's attention. If a litigant files their complaint close to the expiration of the statute of limitations, they could be barred from pursuing the claim if their complaint had a filing error that was not addressed on the front end. If a complaint was filed in the wrong venue (i.e. a venue other than what was listed on the face of the complaint), this would need to be remedied either through dismissal of the complaint or a change of action. The first option could adversely impact litigants, particularly if they filed the complaint on or near the statute of limitations, as discussed above. The second option adversely impacts the courts because judicial action would be required to transfer the case to the venue listed on the face of the complaint.

10. Eliminating the clerk's gatekeeping function is harmful to all litigants, but it could be especially harmful to *pro se* litigants who are not as familiar with filing requirements.

11. The Press Review Queue is concerning to me because it provides the press and public with access to newly submitted civil complaints before the Clerk's Office reviews and accepts them. The press and public should not have access to newly submitted complaints before the District Court judges have access to them. A complaint is not an official court document until it has been accepted, and the District Courts should not be publishing documents (including pleadings that potentially include confidential information or that should have been filed under seal) that have not been reviewed and accepted by a clerk.

12. Providing the press and public with access to documents that have not been reviewed and accepted is also dangerous because an individual could inadvertently or maliciously submit a complaint with confidential information, such as social security numbers, birthdates, bank account information, etc. This information will be available to the press and public during the

entire time the complaint sits in the Press Review Queue. Further, filing errors could result in cases that were supposed to be filed under seal being available in the Press Review Queue.

13. I understand the importance of providing the public and press with timely access to newly submitted civil complaints. The Fifth Judicial District also needs to ensure that litigants' rights are protected. This includes ensuring complaints are reviewed by clerks so any filing errors can be timely addressed on the front end. This also includes ensuring that individuals' personal information is not made available to the press and public. Providing CNS with *immediate* access to newly submitted civil complaints via Auto Accept or the Press Review Queue substantially impairs the Fifth Judicial District's ability to serve and protect the individuals who access the court system.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 30 day of November, 2022.

A handwritten signature in black ink, appearing to read 'Eric Wildman', is written over a horizontal line.

Eric Wildman
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina

amberdina@givenspursley.com

Katherine A. Keating

katherin.keating@bclplaw

Jonathan G. Fetterly

jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukeevett.com
Molly E. Mitchell
ISB#10035; mem@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

**DECLARATION OF THE
HONORABLE CYNTHIA MEYER**

I, the Honorable Cynthia Meyer, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.
2. I serve as a District Judge for the State of Idaho's First Judicial District. As a District Judge, I have jurisdiction over civil and criminal cases.
3. I am also the Administrative District Judge (ADJ) for the First Judicial District. As the ADJ, I have administrative supervision and authority over the operating of the district courts and magistrate divisions in the First Judicial District.
4. As the ADJ and as a District Judge, I am aware that each county Clerk's Office is

DECLARATION OF THE HONORABLE CYNTHIA MEYER - 1

ER-2438

responsible for reviewing filings submitted through File & Serve, which is a software platform available to the public. Once documents arrive in File & Serve, clerks perform a ministerial review of the filings to ensure they meet the requirements established by the Idaho Supreme Court to enter the court system as official records. This includes confirming, if applicable, the correct filing fee has been paid, the necessary signatures are included, the case is being submitted in the appropriate jurisdiction, and that the submitted document indicates the correct court, e.g. magistrate division or district court. If the ministerial aspects of the filing are correct, the Clerk's Office accepts the document for filing and the filing is transferred to Case Manager, which houses the official dockets of each county court. Once in Case Manager, an accepted complaint is filed and becomes an official court record. The District Judges do not participate in this process, with the exception of whether to grant filing fee waiver applications submitted under Idaho Rule of Civil Procedure 10.1.

5. I understand that in this lawsuit, CNS claims Sara Omundson, in her official capacity as Administrative Director of Courts, should be compelled to either enable Tyler's Auto Accept function or implement a Press Review Queue. Either option would provide CNS with immediate access to newly submitted civil complaints before they have been reviewed or accepted for filing by a county clerk and before they are an official court record.

6. Under Auto Accept, the complaint would immediately be part of the official record even if the applicable filing fee had not been paid or there were other errors with the submission, such as filing in the wrong jurisdiction. Judicial action would be required to address improperly submitted documents that are automatically accepted into the case management system.

7. This is a serious concern because caseloads in the First Judicial District are increasing, and District Judges and their court staff are incredibly busy. Auto Accept would increase their already full workload since District Judges and their court staff would have to spend

DECLARATION OF THE HONORABLE CYNTHIA MEYER - 2

time addressing improperly submitted complaints that would have been fielded by the clerks under our current system (e.g. by preparing and entering an order striking the pleading). This puts District Judges in the difficult position of determining what action should be taken if a complaint is improperly submitted.

8. For decades, and long before the transition to e-filing, clerks have served as gatekeepers for improperly submitted documents. Auto Accept would effectively eliminate this gatekeeping function that benefits litigants, District Judges, their staff, and the clerks. Eliminating this gatekeeping function could be extremely detrimental to litigants. Under the current process, a litigant has three days to correct a defect with a complaint if it is rejected by the Clerk's Office and the filing date will then relate back to the date of the original submission. *See* Idaho Rule for Electronic Filing and Service 13. With Auto Accept, an issue with a submitted complaint may go unnoticed for a substantial period of time. If a litigant files their complaint close to the expiration of the statute of limitations, they could be barred from pursuing the claim if their complaint had a filing error that was not addressed on the front end.

9. Eliminating the clerk's gatekeeping function is harmful to all litigants, but it could be especially harmful to *pro se* litigants who are not as familiar with filing requirements.

10. The Press Review Queue would provide members of the press and public with access to newly submitted complaints before they are reviewed and accepted by the Clerk's Office and before they are an official court record.

11. The Press Review Queue is concerning to me because it provides the press and public with access to newly submitted civil complaints before the Clerk's Office reviews and accepts them. The press and public should not have access to newly submitted complaints before they are an official court record and District Court judges have access to them.

DECLARATION OF THE HONORABLE CYNTHIA MEYER - 3

12. I am also concerned about the implicit representation that a document in the Press Review Queue has been filed or is otherwise an official court document. Members of the press and public may not understand such documents have not been reviewed or accepted by clerks and will not become part of the record if they are rejected and not corrected. This could result in the press and/or members of the public reporting on complaints available in the Press Review Queue as if they are official court documents, when in reality no complaint in the Press Review Queue is an official court document because it has not been reviewed and accepted for filing. This could erode public confidence in the judiciary if members of the press and public falsely report on complaints in the Press Review Queue as if they are official court records.

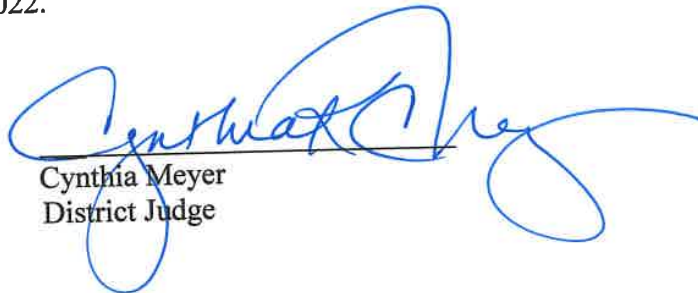
13. Providing the press and public with access to documents that have not been reviewed and accepted is also dangerous because an individual could inadvertently or maliciously submit a complaint that includes confidential information, such as social security numbers, birthdates, bank account information, etc. That information will be available to the press and public during the entire time the complaint sits in the Press Review Queue. Further, filing errors could result in cases that were supposed to be filed under seal being available in the Press Review Queue.

14. I understand the importance of providing the public and press with timely access to newly submitted civil complaints. The First Judicial District also needs to ensure that litigants' rights are protected. This includes ensuring that complaints are reviewed by clerks so any filing errors can be timely addressed. This also includes ensuring that individuals' personal information is not made available to the press and public. Providing CNS with *immediate* access to newly submitted civil complaints via Auto Accept or the Press Review Queue substantially impairs the First Judicial District's ability to serve and protect the individuals who access the court system.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the

foregoing is true and correct.

DATED this 28th day of November, 2022.



Cynthia Meyer
District Judge

DECLARATION OF THE HONORABLE CYNTHIA MEYER - 5

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina

amberdina@givenspursley.com

Katherine A. Keating

katherin.keating@bclplaw

Jonathan G. Fetterly

jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukeevett.com
Molly E. Mitchell
ISB#10035; mem@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

**DECLARATION OF THE
HONORABLE DAVIS
VANDERVELDE**

I, the Honorable Davis VanderVelde, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.
2. I serve as District Judge for the State of Idaho's Third Judicial District. As a District Judge, I have jurisdiction over civil and criminal cases.
3. I also serve as the Administrative District Judge (ADJ) for the Third Judicial District. As the ADJ, I have administrative supervision and authority over the operating of the district courts and magistrate division of the courts in the Third Judicial District.
4. As a District Judge and ADJ, I am aware that each county Clerk's Office is

DECLARATION OF THE HONORABLE DAVIS VANDERVELDE - 1

ER-2444

responsible for reviewing filings submitted through File & Serve, which is a software platform available to the public.

5. I understand that in this lawsuit, CNS claims Sara Omundson, in her official capacity as Administrative Director of Idaho Courts, should be compelled to either enable Tyler's Auto Accept function or implement a Press Review Queue. Either option would provide CNS with immediate access to newly submitted civil complaints before they have been reviewed or accepted for filing by a county clerk.

6. It is my understanding that Under Auto Accept, the complaint would immediately be part of the official record even if the applicable filing fee had not been paid or there were other errors with the submission, such as filing in the wrong jurisdiction.

7. Judicial action would likely be required to address improperly submitted documents that are automatically accepted into the case management system. This may include preparing orders and conducting hearings to strike improperly submitted complaints, otherwise remove them from the case management system, or redact documents in a case file. This is likely to increase the workload of District Judges, their court staff, and clerks.

8. Currently, clerks serve as gatekeepers for improperly submitted documents. It is my understanding that Auto Accept would effectively eliminate this gatekeeping function that benefits litigants, District Judges, their staff, and the clerks. Additionally, I believe eliminating this gatekeeping function could be detrimental to litigants. Under the current process, a litigant has three days to correct a defect with a complaint if it is rejected by the Clerk's Office and the date of the original submission will still appear as the file-stamped date. *See* Idaho Rule for Electronic Filing and Service 13. With Auto Accept, it is possible that any issues with a submitted complaint may go unnoticed for a substantial period of time as filing issues will only be addressed if they are

DECLARATION OF THE HONORABLE DAVIS VANDERVELDE - 2

brought to the District Court's attention. For instance, if a litigant files their complaint close to the expiration of the statute of limitations, they could be barred from pursuing the claim if their complaint had a filing error that was not addressed on the front end.

9. I believe eliminating the clerk's gatekeeping function is harmful to all litigants and it could be especially harmful to *pro se* litigants who are not as familiar with filing requirements. For instance, if a *pro se* litigant were to file a case in the wrong jurisdiction, without clerk review to catch this common mistake, the litigant could presumably miss a statute of limitation and have their case dismissed.

10. The Press Review Queue is also concerning to me because it provides the press and public with access to newly submitted civil complaints before the Clerk's Office reviews and accepts them. I do not believe that the press and public should have access to newly submitted complaints before the District Court judges have access to them.

11. Providing the press and public with access to documents that have not been reviewed and accepted is dangerous because an individual could inadvertently or maliciously submit a complaint with confidential information, such as social security numbers, birthdates, bank account information, etc. This information will be available to the press and public during the entire time the complaint sits in the Press Review Queue. Further, filing errors could result in cases that were supposed to be filed under seal being available in the Press Review Queue.

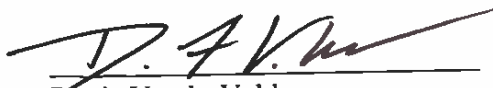
12. I understand the importance of providing the public and press with timely access to newly submitted civil complaints. The Third Judicial District also needs to ensure that litigants' rights are protected. This includes ensuring complaints are reviewed by clerks so any filing errors can be timely addressed on the front end. This also includes working to avoid improper disclosure of confidential information to the press and public. Providing CNS with *immediate* access to newly

DECLARATION OF THE HONORABLE DAVIS VANDERVELDE - 3

submitted civil complaints via Auto Accept or the Press Review Queue would likely impair the Third Judicial District's ability to serve and protect the individuals who access the court system.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 13 day of December, 2022.



Davis VanderVelde
District Judge

DECLARATION OF THE HONORABLE DAVIS VANDERVELDE - 4

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina

amberdina@givenspursley.com

Katherine A. Keating

katherin.keating@bclplaw

Jonathan G. Fetterly

jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukeevett.com
Molly E. Mitchell
ISB#10035; mem@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

**DECLARATION OF THE
HONORABLE DANE WATKINS**

I, the Honorable Dane Watkins, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.
2. I serve as a District Judge for the State of Idaho's Seventh Judicial District. As a District Judge, I have jurisdiction over civil and criminal cases.
3. I am also the Administrative District Judge (ADJ) for the Seventh Judicial District. As the ADJ, I have administrative supervision and authority over the operating of the district courts and magistrate courts in the Seventh Judicial District.
4. As the ADJ and as a District Judge, I am aware that each county Clerk's Office is

DECLARATION OF THE HONORABLE DANE WATKINS - 1

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responsible for reviewing filings submitted through File & Serve, which is a software platform available to the public. Once documents arrive in File & Serve, clerks perform a ministerial review of the filings to ensure they meet the requirements established by the Idaho Supreme Court to enter the court system as official records. This includes confirming, if applicable, the correct filing fee has been paid, the necessary signatures are included, the case is being submitted in the appropriate jurisdiction, and that the submitted document indicates the correct court, e.g. district court or the magistrate division. If the ministerial aspects of the filing are correct, the Clerk's Office accepts the document for filing, a file stamp is affixed and the filing is transferred to Case Manager, which houses the official dockets of each county court. Once in Case Manager, an accepted complaint is filed as part of the official court record. The District Judges do not participate in this process, with the exception of whether to grant filing fee waiver applications submitted under Idaho Rule of Civil Procedure 10.1.

5. The clerk review process was in place prior to the transition to e-filing. With paper filings, the filer would hand the clerk their submission (e.g. a complaint and summons), the clerk would then review the submission to make sure all filing requirements were met (e.g. correct filing fee was included, filed in the correct jurisdiction, etc.). The clerk would either accept the submission—at which point it was file stamped and docketed in the official court record—or reject the submission and provide the filer with an explanation of what needed to be fixed for the complaint to be accepted.

6. I understand that in this lawsuit, CNS claims Sara Omundson, in her official capacity as Administrator Director of Idaho Court, should be compelled to either enable Tyler's Auto Accept function or implement a Press Review Queue. Either option would provide CNS with immediate access to newly submitted civil complaints before they have been reviewed or accepted

DECLARATION OF THE HONORABLE DANE WATKINS - 2

for filing by a county clerk.

7. Under Auto Accept, the complaint would immediately be part of the official record even if the applicable filing fee had not been paid or there were other errors with the submission, such as filing in the wrong jurisdiction. Judicial action would be required to address improperly submitted documents that are automatically accepted into the case management system.

8. This is a serious concern because Auto Accept would increase the already full workload of District Judges and their court staff because they would have to spend time addressing improperly submitted complaints that would have been fielded by the clerks under our current system (e.g. by preparing and entering an order striking the pleading). This puts District Judges in the difficult position of determining what action should be taken if a complaint is improperly submitted. There are twenty judges in the Seventh Judicial District, including magistrate judges. Only six judges have a law clerk or staff attorney. Magistrate Judges in the Seventh Judicial District will occasionally be assigned cases where the amount in controversy is \$25,000 (as opposed to the \$10,000 threshold that invokes the jurisdiction on the District Court). Magistrate Judges do not have law clerks. Thus, although some judges may be able to delegate certain tasks to their law clerks related to correcting improperly submitted documents, many judges do not have this option and will have to spend their own time correcting erroneous filings. In either scenario, automatically routing improper submissions into Case Manager via Auto Accept puts a strain on judicial resources. The clerks and judges are extremely busy, and adding to their already heavy workload would require additional resources such as hiring additional clerks.

9. For decades, and long before the transition to e-filing, clerks have served as gatekeepers for improperly submitted documents. Auto Accept would effectively eliminate this gatekeeping function that benefits litigants, District Judges, their staff, and the clerks. Eliminating

DECLARATION OF THE HONORABLE DANE WATKINS - 3

this gatekeeping function could be extremely detrimental to litigants. Under the current process, a litigant has three days to correct a defect with a complaint if it is rejected by the Clerk's Office and the date of the original submission will still appear as the file-stamped date as the filing date relates back to the date of original submission. *See* Idaho Rule for Electronic Filing and Service 13. With Auto Accept, an issue with a submitted complaint may go unnoticed for a substantial period of time. If a litigant files their complaint close to the expiration of the statute of limitations, they could be barred from pursuing the claim if their complaint had a filing error that was not addressed on the front end. If a complaint was filed in the wrong venue (i.e. a venue other than what was listed on the face of the complaint), this would need to be remedied either through dismissal of the complaint or a change of action. The first option could adversely impact litigants, particularly if they filed the complaint on or near the statute of limitations, as discussed above. The second option adversely impacts the courts because judicial action would be required to transfer the case to the venue listed on the face of the complaint.

10. Eliminating the clerk's gatekeeping function is harmful to all litigants, but it could be especially harmful to *pro se* litigants who are not as familiar with filing requirements. *Pro se* litigants are also less likely to be aware of the requirement that sealed documents need to be "filed conventionally" (i.e. paper filed). IREFS 5(h). This makes them more vulnerable to exposing confidential information if they fail to follow the requirements for filing confidential documents.

11. The Press Review Queue would provide members of the press and public with access to newly submitted complaints before they are reviewed and accepted by the Clerk's Office.

12. The Press Review Queue is concerning to me because it provides the press and public with access to newly submitted civil complaints before the Clerk's Office reviews and accepts them. The press and public should not have access to newly submitted complaints before

the District Court judges have access to them.

13. I am also concerned about the implicit representation that a document in the Press Review Queue has been filed or is otherwise an official court document. Members of the press and public may not understand such documents have not been reviewed or accepted by clerks and will not become part of the record if they are rejected. This could result in the press and/or members of the public reporting on complaints available in the Press Review Queue as if they are official court documents, when in reality no complaint in the Press Review Queue is an official court document because it has not been reviewed and accepted for filing. This could erode public confidence in the judiciary if members of the press and public falsely report on complaints in the Press Review Queue as if they are official court records.

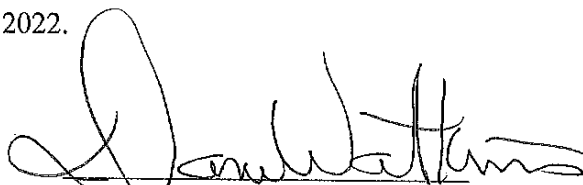
14. There is a potential for both litigants and attorneys misusing the Press Review Queue or Auto Accept to publish confidential or inflammatory information. As an example, an attorney representing a defendant in a high profile criminal case in the Seventh Judicial District intentionally filed documents that contained inflammatory information about the prosecutor, and then contacted the Clerk's Office to demand this information be published on the Idaho Supreme Court's cases of interest website immediately. With Auto Accept or the Press Review Queue, there is no way to prevent malicious and improper filings from being made available to the public. This is especially concerning since many bloggers and other purported members of the media are looking for information that will generate traffic to their website regardless of its accuracy. There are heightened concerns about the dissemination of newly submitted complaints that contain inflammatory or confidential information since these are the types of complaints that can essentially be used as clickbait.

15. I understand the importance of providing the public and press with timely access to

newly submitted civil complaints. The Seventh Judicial District also needs to ensure that litigants' rights are protected. This includes ensuring that complaints are reviewed by clerks so any filing errors can be timely addressed. This also includes ensuring that individuals' personal information is not made available to the press and public. Providing CNS with *immediate* access to newly submitted civil complaints via Auto Accept or the Press Review Queue substantially impairs the Seventh Judicial District's ability to serve and protect the individuals who access the court system.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 8 day of December, 2022.



Dane Watkins
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina

amberdina@givenspursley.com

Katherine A. Keating

katherin.keating@bclplaw

Jonathan G. Fetterly

jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukeevett.com
Molly E. Mitchell
ISB#10035; mem@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

**DECLARATION OF THE
HONORABLE RICK CARNAROLI**

I, the Honorable Rick Carnaroli, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.
2. I serve as District Judge for the State of Idaho's Sixth Judicial District. As a District Judge, I have jurisdiction over civil and criminal cases.
3. I also serve as the Administrative District Judge (ADJ) for the Sixth Judicial District. As the ADJ, I have administrative supervision and authority over the operating of the district courts and magistrate courts in the Sixth Judicial District.
4. As a District Judge and ADJ, I am aware that each county Clerk's Office is

DECLARATION OF THE HONORABLE RICK CARNAROLI- 1

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responsible for reviewing filings submitted through File & Serve, which is a software platform available to the public. Once documents arrive in File & Serve, clerks perform a ministerial review of the to-be-filed documents to ensure they meet the requirements established by the Idaho Supreme Court to enter the court system as official records. This includes confirming, if applicable, the correct filing fee has been paid, the necessary signatures are included, the case is being submitted in the appropriate jurisdiction, and that the submitted document indicates the correct court, e.g. district court or magistrate division. If the ministerial aspects of the filing are correct, the Clerk's Office accepts the document for filing and the filing is transferred to Case Manager, which houses the official dockets of each county court. Once in Case Manager, an accepted complaint is filed as part of the official court record. The District Judges do not participate in this process, with the exception of whether to grant filing fee waiver applications submitted under Idaho Rule of Civil Procedure 10.1.

5. I understand that in this lawsuit, CNS claims Sara Omundson, in her official capacity as Administrator Director of Idaho Court, should be compelled to either enable Tyler's Auto Accept function or implement a Press Review Queue. Either option would provide CNS with immediate access to newly submitted civil complaints before they have been reviewed or accepted for filing by a county clerk.

6. Under Auto Accept, the complaint would immediately transfer to the official record in Case Manager before ministerial review by the clerks, which they have been performing for years both pre- and post-transition to e-filing. Rather than catch errors before the documents were made public and filed in the official court record, clerks would be forced to perform their critical ministerial review in Case Manager.

7. Judicial action would be required to address improperly submitted documents that

DECLARATION OF THE HONORABLE RICK CARNAROLI- 2

are automatically accepted into the case management system. This would include preparing orders and conducting hearings to strike improperly submitted complaints, otherwise remove them from the case management system, or redact already filed documents. This is inefficient and would increase the workload of District Judges, their court staff, and clerks.

8. The clerk's offices are funded through filing fees, so it is imperative that filing fees are actually collected. With Auto Accept, a complaint would be automatically accepted even though a filing fee had not been paid. Thus, Auto Accept limits the clerk's ability to collect a filing fee and will simultaneously require judicial and clerk action in cases where the complaint was submitted without a filing fee. This puts a strain on judicial resources.

9. Clerks serve as gatekeepers for improperly submitted documents. Auto Accept would effectively eliminate this gatekeeping function that benefits litigants, District Judges, their staff, and the clerks. Eliminating this gatekeeping function could be extremely detrimental to litigants. Under the current process, a litigant has three days to correct a defect with a complaint if it is rejected by the Clerk's Office and the date of the original submission will still appear as the file-stamped date. *See* Idaho Rule for Electronic Filing and Service 13. With Auto Accept, an issue with a submitted complaint may go unnoticed for a substantial period of time; filing issues will only be addressed if they are brought to the District Court's attention. If a litigant files their complaint close to the expiration of the statute of limitations, they could be barred from pursuing the claim if their complaint had a filing error that was not addressed on the front end. If a complaint was filed in the wrong venue (i.e. a venue other than what was listed on the face of the complaint), this would need to be remedied either through dismissal of the complaint or a change of action. The first option could adversely impact litigants, particularly if they filed the complaint on or near the statute of limitations, as discussed above. The second option adversely impacts the courts

DECLARATION OF THE HONORABLE RICK CARNAROLI- 3

because judicial action would be required to transfer the case to the venue listed on the face of the complaint.

10. Eliminating the clerk's gatekeeping function is harmful to all litigants, but it could be especially harmful to *pro se* litigants who are not as familiar with filing requirements.

11. In sum, clerk review is a huge component of providing the public with access to the courts. It is much more beneficial for attorneys and litigants to be notified of errors with a submission on the front end so they can correct the error and re-submit the document. Auto Accept eliminates safeguards we currently have in place to ensure documents are properly submitted and that litigants and attorneys are promptly notified of errors.

12. The Press Review Queue is concerning to me because it provides the press and public with access to newly submitted civil complaints before the Clerk's Office reviews and accepts them. The press and public should not have access to newly submitted complaints before the District Court judges have access to them. A complaint is not an official court document until it has been accepted, and the District Courts should not be publishing documents (including pleadings that potentially include confidential information or that should have been filed under seal) that have not been reviewed and accepted by a clerk.

13. Providing the press and public with access to documents that have not been reviewed and accepted is also dangerous because an individual could inadvertently or maliciously submit a complaint with confidential information, such as social security numbers, birthdates, bank account information, etc. This information will be available to the press and public during the entire time the complaint sits in the Press Review Queue. Further, filing errors could result in cases that were supposed to be filed under seal being available in the Press Review Queue.

14. Both Auto Accept and Press Review Queue could erode the public's confidence in

DECLARATION OF THE HONORABLE RICK CARNAROLI- 4

the judicial system because, under either system, documents that have not been reviewed by a clerk will be available to the press and public. This could include documents that contain confidential or inflammatory information, as discussed above, or documents that are rejected for filing (Press Review Queue) or stricken from the docket because they were improperly filed (Auto Accept). The public may attribute filing mistakes to the District Courts rather than the filer. Further, the public would understandably lose confidence in the courts if the courts were publishing documents containing confidential information or that are later rejected for filing. There is no guarantee that members of the press or public will understand—or accurately report—that documents reviewed in the Press Review Queue are *not* official court records. Thus, the Press Review Queue presents concerns about the press reporting on newly submitted complaints as though they are official court records, when in reality they are not official records—and have not been filed—until clerks have reviewed and accepted them for filing. Again, the public may not appreciate where the fault lies when members of the press inaccurately report on newly submitted civil complaints accessed through the Press Review Queue as though they are official court documents.

15. I understand the importance of providing the public and press with timely access to newly submitted civil complaints. The Sixth Judicial District also needs to ensure that litigants' rights are protected. This includes ensuring complaints are reviewed by clerks so any filing errors can be timely addressed on the front end. This also includes ensuring that individuals' personal information is not made available to the press and public. Providing CNS with *immediate* access to newly submitted civil complaints via Auto Accept or the Press Review Queue substantially impairs the Sixth Judicial District's ability to serve and protect the individuals who access the court system.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the

DECLARATION OF THE HONORABLE RICK CARNAROLI- 5

foregoing is true and correct.

DATED this 15th day of December, 2022.

A handwritten signature in black ink, appearing to read "Rick Carnaroli", written over a horizontal line.

Rick Carnaroli
District Judge

DECLARATION OF THE HONORABLE RICK CARNAROLI- 6

ER-2461

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina

amberdina@givenspursley.com

Katherine A. Keating

katherin.keating@bclplaw

Jonathan G. Fetterly

jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukeevett.com
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DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

**DECLARATION OF THE
HONORABLE JAY GASKILL**

I, the Honorable Jay Gaskill, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.
2. I serve as a District Judge for the State of Idaho's Second Judicial District. As a District Judge, I have jurisdiction over civil and criminal cases.
3. I previously served as the Administrative District Judge (ADJ) for the Second Judicial District. As the ADJ, I had administrative supervision and authority over the operating of the district courts and magistrate courts in the Second Judicial District.
4. As a District Judge and the former ADJ, I am aware that each county Clerk's Office

DECLARATION OF THE HONORABLE JAY GASKILL - 1

ER-2463

Office is responsible for reviewing filings submitted through File & Serve, which is a software platform available to the public. Once documents arrive in File & Serve, clerks perform a ministerial review of the filings to ensure they meet the requirements established by the Idaho Supreme Court to enter the court's case management system as official court records. This includes confirming, if applicable, the correct filing fee has been paid, the necessary signatures are included, the case is being submitted in the appropriate jurisdiction, and that the submitted document indicates the correct court division, e.g. magistrate or district court. If the ministerial aspects of the filing are correct, the Clerk's Office accepts the document for filing, a filing stamp is placed on the document, and the filing is transferred to Case Manager, which houses the official dockets of each county court. Once in Case Manager, an accepted complaint is now filed as part of the official court record. The District Judges do not participate in this process, with the exception of whether to grant filing fee waiver applications submitted under Idaho Rule of Civil Procedure 10.1.

5. I understand that in this lawsuit, CNS claims Sara Omundson, in her official capacity as Administrator Director of Idaho Court, should be compelled to either enable Tyler's Auto Accept function or implement a Press Review Queue. Either option would provide CNS with immediate access to newly submitted civil complaints before they have been reviewed or accepted for filing by a county clerk.

6. Under Auto Accept, the complaint would immediately be part of the official record even if the applicable filing fee had not been paid or there were other errors with the submission, such as filing in the wrong jurisdiction.

7. Judicial action would be required to address improperly submitted documents that are automatically accepted into the case management system. This would include preparing

DECLARATION OF THE HONORABLE JAY GASKILL - 2

orders and conducting hearings to strike improperly submitted complaints or otherwise remove them from the case management system or to authorize the redaction of already filed documents. This is inefficient and would increase the workload of District Judges and their court staff.

8. Clerks serve as gatekeepers for improperly submitted documents. Auto Accept would effectively eliminate this gatekeeping function that benefits litigants, District Judges, their staff, and the clerks. Eliminating this gatekeeping function could be extremely detrimental to litigants. Under the current process, a litigant has three days to correct a defect with a complaint if it is rejected by the Clerk's Office and the date of the original submission will still appear as the file-stamped date as the filing date relates back to the original submission date. *See* Idaho Rule for Electronic Filing and Service 13. With Auto Accept, an issue with a submitted complaint may go unnoticed for a substantial period of time; filing issues will only be addressed if they are brought to the District Court's attention. If a litigant files their complaint close to the expiration of the statute of limitations, they could be barred from pursuing the claim if their complaint had a filing error that was not addressed on the front end.

9. Eliminating the clerk's gatekeeping function is harmful to all litigants, but it could be especially harmful to *pro se* litigants who are not as familiar with filing requirements.

10. The Press Review Queue is concerning to me because it provides the press and public with access to newly submitted civil complaints before the Clerk's Office reviews and accepts them. The press and public should not have access to newly submitted complaints before the District Court judges have access to them. A complaint is not an official court document until it has been accepted (file stamped and transferred into the case management system), and the District Courts should not be publishing documents (including pleadings that potentially include confidential information or that should have been filed under seal) that have not been reviewed

DECLARATION OF THE HONORABLE JAY GASKILL - 3

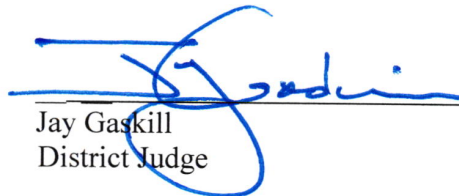
and accepted by a clerk.

11. Providing the press and public with access to documents that have not been reviewed and accepted is also dangerous because an individual could inadvertently or maliciously submit a complaint with confidential information, such as social security numbers, birthdates, bank account information, etc. This information will be available to the press and public during the entire time the complaint sits in the Press Review Queue. Further, filing errors could result in cases that were supposed to be filed under seal being available in the Press Review Queue.

12. I understand the importance of providing the public and press with timely access to newly submitted civil complaints. The Second Judicial District also needs to ensure that litigants' rights are protected. This includes ensuring complaints are reviewed by clerks so any filing errors can be timely addressed on the front end. This also includes ensuring that individuals' personal information is not made available to the press and public. Providing CNS with *immediate* access to newly submitted civil complaints via Auto Accept or the Press Review Queue substantially impairs the Second Judicial District's ability to serve and protect the individuals who access the court system.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 14th day of December, 2022.


Jay Gaskill
District Judge

DECLARATION OF THE HONORABLE JAY GASKILL - 4

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina

amberdina@givenspursley.com

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katherin.keating@bclplaw

Jonathan G. Fetterly

jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukevett.com
Molly E. Mitchell
ISB#10035; mem@dukevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

**DECLARATION OF SHAREE
SPRAGUE**

I, Sharee Sprague, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.

2. I serve as the Clerk of the District Court in Power County, Idaho. I began working for the Idaho Courts in 1991. From 2006 through 2015, I served as the Court Assistance Officer for Idaho's Sixth Judicial District, as Bannock County's Lead Court Assistance Officer, and as the statewide trainer for Court Assistance Officers. I was elected as the Clerk of the District Court in Power County in late 2014 and began serving as the Clerk of the District Court in January 2015.

3. As the Clerk of the District Court for Power County, I am familiar with the e-filing

DECLARATION OF SHAREE SPRAGUE - 1

ER-2468

process, including the requirement for clerk review prior to acceptance for filing. The Clerk's Office is responsible for reviewing filings submitted through File & Serve, which is a software platform available to the public. Once documents arrive in File & Serve, clerks review the filings to ensure they meet the requirements established by the Idaho Supreme Court to enter the court system as official records. This includes confirming, if applicable, the correct filing fee has been paid, the necessary signatures are included, the case is being submitted in the appropriate jurisdiction, and that the submitted document indicates the correct court, e.g. district court or magistrate division. This also includes confirming all necessary documents are included in the e-filing envelope. For example, an initial filing needs to include the complaint, a summons for clerk signature, and an initial case information sheet. If the ministerial aspects of the filing are correct, the Clerk's Office accepts the document for filing and the filing is transferred out of Tyler's database and into the Idaho Courts' Case Management system, which houses the official dockets of each county court. Once in Case Manager, an accepted complaint is now filed as part of the official court record. The District Judges do not participate in this process, with the exception of whether to grant filing fee waiver applications submitted under Idaho Rule of Civil Procedure 10.1.

4. I understand that in this lawsuit, CNS claims Sara Omundson, in her official capacity as Administrative Director of Courts, should be compelled to either enable Tyler's Auto Accept function or implement a Press Review Queue. Either option would provide CNS with immediate access to newly submitted civil complaints before they have been reviewed or accepted for filing by a county clerk.

5. Under Auto Accept, the complaint would immediately be part of the official record even if the applicable filing fee had not been paid or there were other errors with the submission, such as filing in the wrong jurisdiction.

6. Judicial action would be required to address improperly submitted documents that are automatically accepted into the case management system. This may include preparing orders and conducting hearings to strike improperly submitted complaints or otherwise remove them from the case management system. This is inefficient and would increase the workload of District Judges, their court staff, and clerks.

7. Placing extra burdens on the clerks is especially problematic for smaller counties with limited court personnel. Power County has two full time clerks who can review new submissions, but there are some counties with even fewer clerks or that require clerks to perform a number of tasks unrelated to court filings (e.g. assisting with elections, serving as in court clerks). If a filing error has to be corrected on the back end (i.e. once a document is in Case Manager), it can take around an hour for court personnel to correct the error and more when monies are attached to the filing that need to be backed out. *See* IREFS 2(i) (court has discretion to reject documents that have been accepted for filing). Notifying the filer of an error in File & Serve, on the other hand, can be accomplished in a matter of minutes or seconds. If all or even some portion of complaints were auto accepted, this would greatly increase the workload for the clerks. In Power County, I anticipate we would need to hire at least one additional clerk if filing errors had to be addressed after documents had been accepted for filing. Hiring an additional clerk is not in Power County's budget.

8. Clerks serve as gatekeepers for improperly submitted documents. Auto Accept would effectively eliminate this gatekeeping function that benefits litigants, District Judges, their staff, and the clerks. Eliminating this gatekeeping function could be extremely detrimental to litigants. Under the current process, a litigant has three days to correct a defect with a complaint if it is rejected by the Clerk's Office and the date of the original submission will still appear as the

file-stamped date. *See* Idaho Rule for Electronic Filing and Service 13. With Auto Accept, an issue with a submitted complaint may go unnoticed for an indefinite period of time; filing issues will only be addressed if they are brought to the District Court's attention. If a litigant files their complaint close to the expiration of the statute of limitations, they could be barred from pursuing the claim if their complaint had a filing error that was not addressed on the front end.

9. Clerk review is also important because some filings need to be presented to a judge immediately, and clerks ensure that such documents are flagged for the judge.

10. Clerk review is important not only for complaints, but for other types of documents. For example, attorneys or litigants oftentimes have errors with interest calculations in writs of execution, e.g. by applying compound interest or filing subsequent writs of execution that do not deduct for amount previously collected. Clerks review the writs of execution to ensure they list the correct amount and that interest has been calculated correctly.

11. The Press Review Queue and Auto Accept are concerning to me because both options provide the press and public with access to newly submitted civil complaints before the Clerk's Office reviews them and determines they are acceptable for filing. People could submit documents with confidential or sensitive information, which would be publicly available on submission. Neither option prevents against malicious filings, or even the inadvertent disclosure of confidential information.

12. Another concern with the Press Review Queue involves inaccurate reporting on complaints that are rejected for filing. If a complaint is reported on by the press but is ultimately rejected for filing, the public may speculate about the reasons why this purportedly filed complaint did not initiate a civil action. The public may blame the courts—rather than the news organization that inaccurately reported on the complaint—for this.

13. In my previous roles as a court clerk of Power County, Court Assistance Officer for Idaho's Sixth Judicial District, as Bannock County's Lead Court Assistance Officer, and as the statewide trainer for Court Assistance Officers, I became familiar with the filing process when Idaho Courts were still on a paper filing system. I am not aware of any jurisdictions in Idaho that provided the press or public with access to paper complaints before they were reviewed and accepted for filing.

14. I understand the importance of providing the public and press with timely access to newly submitted civil complaints. The Power County District Court also needs to ensure that litigants' rights are protected. This includes ensuring complaints are reviewed by clerks so any filing errors can be timely addressed on the front end. This also includes ensuring that individuals' personal information is not made available to the press and public. Providing CNS with *immediate* access to newly submitted civil complaints via Auto Accept or the Press Review Queue substantially impairs the Power County District Court's ability to serve and protect the individuals who access the court system.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 15th day of December, 2022.


Sharee Sprague

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina
Katherine A. Keating
Jonathan G. Fetterly

amberdina@givenspursley.com
katherin.keating@bclplaw
jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukeevett.com
Molly E. Mitchell
ISB#10035; mem@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

**DECLARATION OF ROLAND
GAMMILL**

I, Roland Gammill, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.
2. I serve as the Trial Court Administrator for the State of Idaho's Second Judicial District.
3. As a Trial Court Administrator, I am aware that each county Clerk's Office is responsible for reviewing filings submitted through File & Serve, which is a software platform available to the public. Once documents arrive in File & Serve, clerks perform a ministerial review of the filings to ensure they meet the requirements established by the Idaho Supreme Court to enter

DECLARATION OF ROLAND GAMMILL- 1

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Court to enter the court system as official records. This includes confirming, if applicable, the correct filing fee has been paid, the necessary signatures are included, the case is being submitted in the appropriate jurisdiction, and that the submitted document indicates the correct court, e.g. district court or magistrate division. If the ministerial aspects of the filing are correct, the Clerk's Office accepts the document for filing and the filing is transferred out of Tyler's database and into the Idaho courts' Case Management system, which houses the official dockets of each county court. Once in Case Manager, an accepted complaint is now filed as part of the official court record. The District Judges do not participate in this process, with the exception of whether to grant filing fee waiver applications submitted under Idaho Rule of Civil Procedure 10.1.

4. I understand that in this lawsuit, CNS claims Sara Omundson, in her official capacity as Administrative Director of Courts, should be compelled to either enable Tyler's Auto Accept function or implement a Press Review Queue. Either option would provide CNS with immediate access to newly submitted civil complaints before they have been reviewed or accepted for filing by a county clerk.

5. Under Auto Accept, the complaint would immediately be part of the official record even if the applicable filing fee had not been paid or there were other errors with the submission, such as filing in the wrong jurisdiction.

6. Judicial action would be required to address improperly submitted documents that are automatically accepted into the case management system. This would include preparing orders and conducting hearings to strike improperly submitted complaints or otherwise remove them from the case management system. This is inefficient and would increase the workload of District Judges, their court staff, and clerks.

7. One of the counties in the Second Judicial District has only one clerk and one

DECLARATION OF ROLAND GAMMILL- 2

part-time clerk. There has also been significant staffing issues throughout the Second Judicial District. Two counties have had 100% turnover in clerks over the past year, another has had 50% turnover, and two other counties have had 15% to 30% turnover per year. Placing extra ministerial burdens on the clerks is especially problematic for smaller counties with limited court personnel.

8. Clerks serve as gatekeepers for improperly submitted documents. Auto Accept would effectively eliminate this gatekeeping function that benefits litigants, District Judges, their staff, and the clerks. Eliminating this gatekeeping function could be extremely detrimental to litigants. Under the current process, a litigant has three days to correct a defect with a complaint if it is rejected by the Clerk's Office and the date of the original submission will still appear as the file-stamped date. *See* Idaho Rule for Electronic Filing and Service 13. With Auto Accept, an issue with a submitted complaint may go unnoticed for a substantial period of time; filing issues will only be addressed if they are brought to the District Court's attention. If a litigant files their complaint close to the expiration of the statute of limitations, they could be barred from pursuing the claim if their complaint had a filing error that was not addressed on the front end.

9. Eliminating the clerk's gatekeeping function is harmful to all litigants, but it could be especially harmful to *pro se* litigants who are not as familiar with filing requirements. Particularly in smaller counties, clerks go the extra mile to help litigants and attorneys with their submissions to ensure filings are accepted. Auto Accept limits the clerks' abilities to provide attorneys and litigants with this assistance.

10. Auto Accept would also present issues with refunding filing fees if an action is filed in the wrong county. Currently, filing fees are processed by Tyler and Tyler transfers payment to the District Court only if the complaint is accepted. If complaints were automatically

DECLARATION OF ROLAND GAMMILL- 3

accepted, payment would presumably be automatically received by the District Courts. This means the District Courts would have to dedicate personnel to issuing refunds for filing fees, which is a difficult and cumbersome process, as opposed to refunds being handled by Tyler.

11. The Press Review Queue is concerning to me because it provides the press and public with access to newly submitted civil complaints before the Clerk's Office reviews and accepts them. The press and public should not have access to newly submitted complaints before the District Courts have access to them. A complaint is not an official court document until it has been accepted, and the District Courts should not be publishing documents (including pleadings that potentially include confidential information or that should have been filed under seal) that have not been reviewed and accepted by a clerk.

12. Providing the press and public with access to documents that have not been reviewed and accepted is also dangerous because an individual could inadvertently or maliciously submit a complaint with confidential information, such as social security numbers, birthdates, bank account information, etc. This information will be available to the press and public during the entire time the complaint sits in the Press Review Queue. Further, filing errors could result in cases that were supposed to be filed under seal being available in the Press Review Queue.

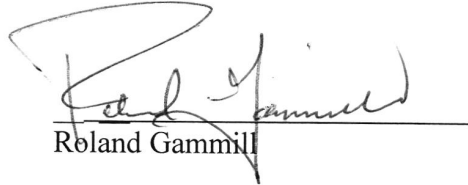
13. I understand the importance of providing the public and press with timely access to newly submitted civil complaints. The Second Judicial District also needs to ensure that litigants' rights are protected. This includes ensuring complaints are reviewed by clerks so any filing errors can be timely addressed on the front end. This also includes ensuring that individuals' personal information is not made available to the press and public. Providing CNS with *immediate* access to newly submitted civil complaints via Auto Accept or the Press Review

DECLARATION OF ROLAND GAMMILL- 4

Queue substantially impairs the Second Judicial District's ability to serve and protect the individuals who access the court system.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 14 day of December, 2022.



Roland Gammill

DECLARATION OF ROLAND GAMMILL- 5

ER-2478

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina

amberdina@givenspursley.com

Katherine A. Keating

katherin.keating@bclplaw

Jonathan G. Fetterly

jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukeevett.com
Molly E. Mitchell
ISB#10035; mem@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

**DECLARATION OF SANDRA
BARRIOS**

I, Sandra Barrios, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.

2. I serve as the Trial Court Administrator for the State of Idaho's Fourth Judicial District.

3. As a Trial Court Administrator, I am aware that each county Clerk's Office is responsible for reviewing filings submitted through File & Serve, which is a software platform available to the public. Once documents arrive in File & Serve, clerks perform a ministerial review of the to-be-filed documents to ensure they meet the requirements established by the Idaho

DECLARATION OF SANDRA BARRIOS - 1

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Supreme Court to enter the court system as official records. This includes confirming, if applicable, the correct filing fee has been paid, the necessary signatures are included, the case is being submitted in the appropriate jurisdiction, and that the submitted document indicates the correct court division, e.g. magistrate or district court. If the ministerial aspects of the filing are correct, the Clerk's Office accepts the document for filing, a file stamp is affixed, and the filing is transferred to the court's Case Manager, which houses the official dockets of each county court. Once in Case Manager, an accepted complaint is now filed as part of the official court record. The District Judges do not participate in this process, with the exception of whether to grant filing fee waiver applications submitted under Idaho Rule of Civil Procedure 10.1.

4. I understand that in this lawsuit, CNS claims Sara Omundson, in her official capacity as Administrator Director of Idaho Court, should be compelled to either enable Tyler's Auto Accept function or implement a Press Review Queue. Either option would provide CNS with immediate access to newly submitted civil complaints before they have been reviewed or accepted for filing by a county clerk.

5. Under Auto Accept, the complaint would immediately transfer to the official record in Case Manager before ministerial review by the clerks, which they have been performing for years both pre- and post-transition to e-filing. Rather than catch errors before the documents were made public and filed in the official court record, clerks would be forced to perform their critical ministerial review in Case Manager. This is problematic for the following reasons:

- a. First, each filed document would be separately docketed in Case Manager, instead of being together in one e-envelope like in File & Serve (the Tyler system clerks currently use to review submitted documents). Thus, a deputy clerk would have to review each document by clicking through multiple

DECLARATION OF SANDRA BARRIOS - 2

“tabs” in case manager, as opposed to review one envelope in File & Serve. This will increase the time it takes deputy clerks to review documents for basic conformity with procedural and court filing rules. Increasing the time it takes to review a submission by only a few minutes will have significant impacts on the workload of the Clerk’s Office based on the volume of filings reviewed. On the District Court floor of Ada County, approximately 5,200 documents were processed by one of the areas of the Clerk’s Office in the past month. If each of those documents had to be reviewed individually by clicking through tabs in Case Manager, there would be a significant increase in the amount of time it takes to perform the ministerial review, which would produce delays in review and likely result in the need to add staff, re-allocate staffing resources, or both.

- b. The current system supports the purpose of deputy clerks, who are responsible for ensuring information and documents move through the court efficiently. The File & Serve platform allows clerks to efficiently review information related to a submission in one place. Once a submission is approved, the press and public have immediate access to filed documents because they are instantaneously transferred to Case Manager. The structure of File & Serve also allows Clerk’s Offices to move documents into queues, which are essential to workflow and staffing management. Staff can be assigned to review documents in the queues depending on staffing shortages or court document submission volume. Case Manager does not allow the Clerk’s Offices to make any of those decisions. I believe our current system

of review in File & Serve is efficient and provides the press and public with timely access to filings.

- c. Making corrections in Case Manager would be time consuming and cumbersome because deputy clerks would have to track down contact information for the filer in File & Serve and then call or email the filer (assuming contact information was provided) to explain the issues with the filings that need to be corrected. All of this would happen outside of the Case Manager program because this program does not have the communication function that File & Serve has. Such communications could not happen in File & Serve because submission would be immediately transferred to Case Manager. This would be an inefficient process for the deputy clerks, especially since the communications would be housed in individual deputy clerk's email accounts and could not be broadly shared, as they now are in File & Serve. This would result in problems of sharing information whenever a deputy clerk is on vacation, out sick, or is otherwise not in the Clerk's office.

6. Judicial action would be required to address improperly submitted documents that are automatically accepted into the case management system. This would include preparing orders and conducting hearings to strike improperly submitted complaints, otherwise remove them from the case management system, or to redact already filed documents. This is inefficient and would increase the workload of District Judges, their court staff, and clerks. Clerks would also need guidance from the Idaho Supreme Court on how to handle improperly filed documents that were automatically accepted into Case Manager (i.e. what issues can be resolved by clerks and what

issues require judicial action).

7. The courts are funded in part through filing fees, so it is imperative that filing fees are actually collected. With Auto Accept, a complaint would be automatically accepted even though a filing fee had not been paid. Thus, Auto Accept limits the clerk's ability to collect a filing fee and will simultaneously require judicial and clerk action in cases where the complaint was submitted without a filing fee. This puts a strain on judicial resources.

8. Clerks serve as gatekeepers for improperly submitted documents. Auto Accept would effectively eliminate this gatekeeping function that benefits litigants, District Judges, their staff, and the clerks. Eliminating this gatekeeping function could be extremely detrimental to litigants. Under the current process, a litigant has three days to correct a defect with a complaint if it is rejected by the Clerk's Office and the date of the original submission will still appear as the file-stamped date as the filing date relates back to the date of original submission. *See* Idaho Rule for Electronic Filing and Service 13. With Auto Accept, an issue with a submitted complaint may go unnoticed for a substantial period of time; filing issues will only be addressed if they are brought to the District Court's attention. If a litigant files their complaint close to the expiration of the statute of limitations, they could be barred from pursuing the claim if their complaint had a filing error that was not addressed on the front end.

9. Eliminating the clerk's gatekeeping function is harmful to all litigants, but it could be especially harmful to *pro se* litigants who are not as familiar with filing requirements.

10. The Press Review Queue is concerning to me because it provides the press and public with access to newly submitted civil complaints before the Clerk's Office reviews and accepts them. The press and public should not have access to newly submitted complaints before the District Court judges have access to them. A complaint is not an official court document until

DECLARATION OF SANDRA BARRIOS - 5

it has been accepted, and the District Courts should not be publishing documents (including pleadings that potentially include confidential information or that should have been filed under seal) that have not been reviewed and accepted by a clerk.

11. Providing the press and public with access to documents that have not been reviewed and accepted is also dangerous because an individual could inadvertently or maliciously submit a complaint with confidential information, such as social security numbers, birthdates, bank account information, etc. This information will be available to the press and public during the entire time the complaint sits in the Press Review Queue. Further, filing errors could result in cases that were supposed to be filed under seal being available in the Press Review Queue.

12. The potential for the disclosure of confidential information is especially concerning given the recent and unfortunate trend of doxing public officials, including judges, by extremist groups.¹ A document labeled as a complaint could be submitted to the Press Review Queue regardless of its actual substance. Thus, the Press Review Queue could be misused for doxing since individuals could submit a document labeled as a complaint that includes home addresses, phone numbers, etc. of public officials or any member of the public. Anything labeled as a complaint by the submitter would appear in the Press Review Queue, which essentially gives individuals a public platform to widely disseminate defamatory statements, confidential information, or any other improper documents that would be interpreted by clerks under the current system.

13. I understand the importance of providing the public and press with timely access to newly submitted civil complaints. The Fourth Judicial District also needs to ensure that litigants'

¹ See e.g. <https://idahocapitalsun.com/2022/04/15/idaho-extremists-target-judges-prosecutors-health-workers-in-doxxing-campaigns/>; <https://www.ktvb.com/article/news/local/idaho-judge-doxxed-child-protection/277-751b283e-0675-4f83-9ffe-ffc63094fb4c>; <https://cdapress.com/news/2022/jun/14/police-face-threats-doxxing-after-patriot-front-ar/>

rights are protected. This includes ensuring complaints are reviewed by clerks so any filing errors can be timely addressed on the front end. This also includes ensuring that individuals' personal information is not made available to the press and public. Providing CNS with *immediate* access to newly submitted civil complaints via Auto Accept or the Press Review Queue substantially impairs the Fourth Judicial District's ability to serve and protect the individuals who access the court system.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 6th day of December, 2022.



Sandra Barrios

DECLARATION OF SANDRA BARRIOS - 7

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina

amberdina@givenspursley.com

Katherine A. Keating

katherin.keating@bclplaw

Jonathan G. Fetterly

jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukeevett.com
Molly E. Mitchell
ISB#10035; mem@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

**DECLARATION OF KARLENE
BEHRINGER**

I, Karlene Behringer, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.

2. I serve as the Trial Court Administrator for the State of Idaho's First Judicial District.

3. As the Trial Court Administrator, I am aware that each county Clerk's Office is responsible for reviewing filings submitted through File & Serve, which is a software platform available to the public. Once documents arrive in File & Serve, clerks perform a ministerial review of the filings to ensure they meet the requirements established by the Idaho Supreme Court to enter

DECLARATION OF KARLENE BEHRINGER- 1

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the court system as official records. This includes confirming, if applicable, the correct filing fee has been paid, the necessary signatures are included, the case is being submitted in the appropriate jurisdiction, and that the submitted document indicates the correct court division, e.g. magistrate or district court. If the ministerial aspects of the filing are correct, the Clerk's Office accepts the document for filing and the filing is transferred to Case Manager, which houses the official dockets of each county court. Once in Case Manager, an accepted complaint is filed as part of the official court record. The District Judges do not participate in this process with the exception of whether to grant filing fee waiver applications submitted under Idaho Rule of Civil Procedure 10.1.

4. I understand that in this lawsuit, CNS claims Sara Omundson, in her official capacity as Administrator Director of Idaho Court, should be compelled to either enable Tyler's Auto Accept function or implement a Press Review Queue. Either option would provide CNS with immediate access to newly submitted civil complaints before they have been reviewed or accepted for filing by a county clerk.

5. Under Auto Accept, the complaint would immediately be part of the official record even if the applicable filing fee had not been paid or there were other errors with the submission, such as filing in the wrong jurisdiction. Judicial action would be required to address improperly submitted documents that are automatically accepted into the case management system.

6. This is a serious concern because caseloads in the First Judicial District are increasing, and District Judges and their court staff are incredibly busy. Auto Accept would increase their already full workload since District Judges and their court staff would have to spend time addressing improperly submitted complaints that would have been fielded by the clerks under our current system (e.g. by preparing and entering an order striking the pleading). This puts District Judges in the difficult position of determining what action should be taken if a complaint is

improperly submitted.

7. For decades, and long before the transition to e-filing, clerks have served as gatekeepers for improperly submitted documents. Auto Accept would effectively eliminate this gatekeeping function that benefits litigants, District Judges, their staff, and the clerks. Eliminating this gatekeeping function could be extremely detrimental to litigants. Under the current process, a litigant has three days to correct a defect with a complaint if it is rejected by the Clerk's Office and the date of the original submission will still appear as the file-stamped date. *See* Idaho Rule for Electronic Filing and Service 13. With Auto Accept, an issue with a submitted complaint may go unnoticed for a substantial period of time. If a litigant files their complaint close to the expiration of the statute of limitations, they could be barred from pursuing that claim if their complaint had a filing error that was not addressed on the front end.

8. Eliminating the clerk's gatekeeping function is harmful to all litigants, but it could be especially harmful to *pro se* litigants who are not as familiar with filing requirements.

9. The Press Review Queue would provide members of the press and public with access to newly submitted complaints before they are reviewed and accepted by the Clerk's Office.

10. The Press Review Queue is concerning to me because it provides the press and public with access to newly submitted civil complaints before the Clerk's Office reviews and accepts them. The press and public should not have access to newly submitted complaints before the District Courts have access.

11. I am also concerned about the implicit representation that a document in the Press Review Queue has been filed or is otherwise an official court document. Members of the press and public may not understand such documents have not been reviewed or accepted by clerks and will not become part of the record if they are rejected. This could result in the press and/or members of

the public reporting on complaints available in the Press Review Queue as if they are official court documents, when in reality no complaint in the Press Review Queue is an official court document because it has not been reviewed and accepted for filing. This could erode public confidence in the judiciary if members of the press and public falsely report on complaints in the Press Review Queue as if they are official court records.

12. Providing the press and public with access to documents that have not been reviewed and accepted is also dangerous because an individual could inadvertently or maliciously submit a complaint that includes confidential information, such as social security numbers, birthdates, bank account information, etc. That information will be available to the press and public during the entire time the complaint is in the Press Review Queue. Further, filing errors could result in cases that were supposed to be filed under seal being available in the Press Review Queue.

13. I understand the importance of providing the public and press with timely access to newly submitted civil complaints. The First Judicial District also needs to ensure that litigants' rights are protected. This includes ensuring that complaints are reviewed by clerks so any filing errors can be timely addressed. This also includes ensuring that individuals' personal information is not made available to the press and public. Providing CNS with *immediate* access to newly submitted civil complaints via Auto Accept or the Press Review Queue substantially impairs the First Judicial District's ability to serve and protect the individuals who access the court system.

14. I also understand CNS has alleged there have been delays in reviewing and accepting newly submitted complaints. Since the transition to e-filing roughly four years ago, Clerk's Offices throughout the First Judicial District have been consistently short-staffed. They have experienced an extremely high amount of turnover and have had a very difficult time recruiting new employees. These problems were exacerbated by the COVID-19 pandemic, which

caused already short-staffed offices to fall behind on processing newly submitted complaints. Kootenai County has petitioned the County Commissioners for additional funding to hire more clerks to help with the processing of complaints. Thus, any alleged delays in processing complaints are the result of scarce judicial resources and difficulties with recruiting and retaining personnel; the review and acceptance of complaints is not a tedious or lengthy process, but we do not always have enough clerks to keep up with the volume of filings.

15. Auto Accept will put an additional strain on the Clerk's Offices because it is much more efficient for clerks to review and accept or reject a complaint on the front end, as opposed to tracking down an improperly accepted complaint and working with a District Judge and his or her court staff to take the appropriate judicial action to remedy the improper filing.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 28th day of November, 2022.

Karlene Behringer
Karlene Behringer

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina

amberdina@givenspursley.com

Katherine A. Keating

katherin.keating@bclplaw

Jonathan G. Fetterly

jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukeevett.com
Molly E. Mitchell
ISB#10035; mem@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

DECLARATION OF KERRY HONG

I, Kerry Hong, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.
2. I serve as the Trial Court Administrator for the State of Idaho's Sixth Judicial District.
3. As a Trial Court Administrator, I am aware that each county Clerk's Office is responsible for reviewing filings submitted through File & Serve, which is a software platform available to the public. Once documents arrive in File & Serve, clerks perform a ministerial review of the to-be-filed documents to ensure they meet the requirements established by the Idaho

DECLARATION OF KERRY HONG- 1

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Supreme Court to enter the court system as official records. This includes confirming, if applicable, the correct filing fee has been paid, the necessary signatures are included, the case is being submitted in the appropriate jurisdiction, and that the submitted document indicates the correct court division, e.g. magistrate or district court. If the ministerial aspects of the filing are correct, the Clerk's Office accepts the document for filing and the filing is transferred to Case Manager, which houses the official dockets of each county court. Once in Case Manager, an accepted complaint is filed as part of the official court record. The District Judges do not participate in this process, with the exception of whether to grant filing fee waiver applications submitted under Idaho Rule of Civil Procedure 10.1.

4. I understand that in this lawsuit, CNS claims Sara Omundson, in her official capacity as Administrator Director of Idaho Court, should be compelled to either enable Tyler's Auto Accept function or implement a Press Review Queue. Either option would provide CNS with immediate access to newly submitted civil complaints before they have been reviewed or accepted for filing by a county clerk.

5. Under Auto Accept, the complaint would immediately transfer to the official record in Case Manager before ministerial review by the clerks, which they have been performing for years both pre- and post-transition to e-filing. Rather than catch errors before the documents were made public and filed in the official court record, clerks would be forced to perform their critical ministerial review in Case Manager. This is problematic for the following reasons:

- a. First, each filed document would be separately docketed in Case Manager, instead of being together in one e-envelope like in File & Serve (the Tyler system clerks currently use to review submitted documents). Thus, a deputy clerk would have to review each document by clicking through multiple

“tabs” in case manager, as opposed to review one envelope in File & Serve.

This will increase the time it takes deputy clerks to review documents for basic conformity with procedural and court filing rules.

- b. The current system supports the purpose of deputy clerks, who are responsible for ensuring information and documents move through the court efficiently. The File & Serve platform allows clerks to efficiently review information related to a submission in one place. Once a submission is approved, the press and public have immediate access to filed documents because they are instantaneously transferred to Case Manager. The structure of File & Serve also allows Clerk’s Offices to move documents into queues, which are essential to workflow and staffing management. Staff can be assigned to review documents in the queues depending on staffing shortages or court document submission volume. Case Manager does not allow the Clerk’s Offices to make any of those decisions. I believe our current system of review in File & Serve is efficient and provides the press and public with timely access to filings.
- c. Making corrections in Case Manager would be time consuming and cumbersome because deputy clerks would have to track down contact information for the filer in File & Serve and then call or email the filer (assuming contact information was provided) to explain the issues with the filings that need to be corrected. All of this would happen outside of the Case Manager program because this program does not have the communication function that File & Serve has. Such communications could

not happen in File & Serve because submission would be immediately transferred to Case Manager. This would be an inefficient process for the deputy clerks, especially since the communications would be housed in individual deputy clerk's email accounts and could not be broadly shared, as they now are in File & Serve. This would result in problems of sharing information whenever a deputy clerk is on vacation, out sick, or is otherwise not in the Clerk's Office.

6. Judicial action would be required to address improperly submitted documents that are automatically accepted into the case management system. This would include preparing orders and conducting hearings to strike improperly submitted complaints, otherwise remove them from the case management system, or to redact already filed documents. This is inefficient and would increase the workload of District Judges, their court staff, and clerks. As an example, in Power County it takes clerks at least an hour to correct an error that is missed during the review and acceptance process. Auto Accept would eliminate clerk review on the front end. If the Clerk's Office had to dedicate an hour to correcting every erroneous filing that went into Case Manager via Auto Accept, this would place a significant strain on judicial resources and would require additional clerks.

7. The clerk's offices are funded through filing fees, so it is imperative that filing fees are actually collected. With Auto Accept, a complaint would be automatically accepted even though a filing fee had not been paid. Thus, Auto Accept limits the clerk's ability to collect a filing fee and will simultaneously require judicial and clerk action in cases where the complaint was submitted without a filing fee. This puts a strain on judicial resources.

8. Clerks serve as gatekeepers for improperly submitted documents. Auto Accept

would effectively eliminate this gatekeeping function that benefits litigants, District Judges, their staff, and the clerks. Eliminating this gatekeeping function could be extremely detrimental to litigants. Under the current process, a litigant has three days to correct a defect with a complaint if it is rejected by the Clerk's Office and the date of the original submission will still appear as the file-stamped date because the filing date relates back to the date of original submission. *See* Idaho Rule for Electronic Filing and Service 13. With Auto Accept, an issue with a submitted complaint may go unnoticed for a substantial period of time; filing issues will only be addressed if they are brought to the District Court's attention. If a litigant files their complaint close to the expiration of the statute of limitations, they could be barred from pursuing the claim if their complaint had a filing error that was not addressed on the front end. If a complaint was filed in the wrong venue (i.e. a venue other than what was listed on the face of the complaint), this would need to be remedied either through dismissal of the complaint or a change of action. The first option could adversely impact litigants, particularly if they filed the complaint on or near the statute of limitations, as discussed above. The second option adversely impacts the courts because judicial action would be required to transfer the case to the venue listed on the face of the complaint.

9. Eliminating the clerk's gatekeeping function is harmful to all litigants, but it could be especially harmful to *pro se* litigants who are not as familiar with filing requirements.

10. In sum, clerk review is a huge component of providing the public with access to the courts. It is much more beneficial for attorneys and litigants to be notified of errors with a submission on the front end so they can correct the error and re-submit the document. Auto Accept eliminates safeguards we currently have in place to ensure that documents are properly submitted and that litigants and attorneys are promptly notified of errors.

11. The Press Review Queue is concerning to me because it provides the press and

public with access to newly submitted civil complaints before the Clerk's Office reviews and accepts them. The press and public should not have access to newly submitted complaints before the District Court judges have access to them. A complaint is not an official court document until it has been accepted, and the District Courts should not be publishing documents (including pleadings that potentially include confidential information or that should have been filed under seal) that have not been reviewed and accepted by a clerk.

12. Providing the press and public with access to documents that have not been reviewed and accepted is also dangerous because an individual could inadvertently or maliciously submit a complaint with confidential information, such as social security numbers, birthdates, bank account information, etc. This information will be available to the press and public during the entire time the complaint sits in the Press Review Queue. Further, filing errors could result in cases that were supposed to be filed under seal being available in the Press Review Queue.

13. Both Auto Accept and Press Review Queue could erode the public's confidence in the judicial system because, under either system, documents that have not been reviewed by a clerk will be available to the press and public. This could include documents that contain confidential or inflammatory information, as discussed above, or documents that are rejected for filing (Press Review Queue) or stricken from the docket because they were improperly filed (Auto Accept). The public may attribute filing mistakes to the District Courts rather than the filer. Further, the public would understandably lose confidence in the courts if the courts were publishing documents containing confidential information or that are later rejected for filing. There is no guarantee that members of the press or public will understand—or accurately report—that documents reviewed in the Press Review Queue are *not* official court records. Thus, the Press Review Queue presents concerns about the press reporting on newly submitted complaints as though they are official court

records, when in reality they are not official records—and have not been filed—until clerks have reviewed and accepted them for filing. Again, the public may not appreciate where the fault lies when members of the press inaccurately report on newly submitted civil complaints accessed through the Press Review Queue as though they are official court documents.

14. I understand the importance of providing the public and press with timely access to newly submitted civil complaints. The Sixth Judicial District also needs to ensure that litigants' rights are protected. This includes ensuring complaints are reviewed by clerks so any filing errors can be timely addressed on the front end. This also includes ensuring that individuals' personal information is not made available to the press and public. Providing CNS with *immediate* access to newly submitted civil complaints via Auto Accept or the Press Review Queue substantially impairs the Sixth Judicial District's ability to serve and protect the individuals who access the court system.

15. I am not aware of any significant delays in providing the press and public with access to newly submitted civil complaints in the Sixth Judicial District. Complaints are typically reviewed and accepted within 24 hours from the time of their submission.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 12 day of December, 2022.



Kerry Hong

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina

amberdina@givenspursley.com

Katherine A. Keating

katherin.keating@bclplaw

Jonathan G. Fetterly

jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukeevett.com
Molly E. Mitchell
ISB#10035; mem@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

DECLARATION OF JAMIE ROBB

I, Jamie Robb, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.

2. I serve as the Trial Court Administrator for the State of Idaho's Third Judicial District.

3. As a Trial Court Administrator, I am aware that each county Clerk's Office is responsible for reviewing filings submitted through File & Serve, which is a software platform available to the public. Trial Court Administrators are responsible for carrying out administrative duties of the District Court as delegated by the Administrative Judge for that particular judicial

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district. ICAR 43. Trial Court Administrators must be familiar with statewide standardized business processes for court clerks, as well as local practices, and assist where necessary to ensure there is alignment between the two. Once documents arrive in File & Serve, clerks perform a ministerial review of the filings to ensure they meet the requirements established by the Idaho Supreme Court to enter the court system as official records. This includes confirming, if applicable, the correct filing fee has been paid, the necessary signatures are included, the case is being submitted in the appropriate jurisdiction, and that the submitted document indicates the correct court division, e.g. magistrate or district court. If the ministerial aspects of the filing are correct, the Clerk's Office accepts the document for filing, file stamped, and the filing is transferred to Case Manager, which houses the official dockets of each county court. Once in Case Manager, an accepted complaint is now filed as part of the official court record. The District Judges do not participate in this process, with the exception of whether to grant filing fee waiver applications submitted under Idaho Rule of Civil Procedure 10.1.

4. I understand that in this lawsuit, CNS claims Sara Omundson, in her official capacity as Administrator Director of Idaho Court, should be compelled to either enable Tyler's Auto Accept function or implement a Press Review Queue. Either option would provide CNS with immediate access to newly submitted civil complaints before they have been reviewed or accepted for filing by a county clerk.

5. Under Auto Accept, the complaint would immediately be part of the official record even if the applicable filing fee had not been paid or there were other errors with the submission, such as filing in the wrong jurisdiction.

6. Judicial action would be required to address improperly submitted documents that are automatically accepted into the case management system. This would include preparing orders

and conducting hearings to strike improperly submitted complaints or otherwise remove them from the case management system. This is inefficient and would increase the workload of District Judges, their court staff, and clerks.

7. Placing extra ministerial burdens on the clerks is problematic for Clerk's Offices that are already struggling to hire and retain sufficient personnel. Canyon County Clerk's Office currently has 8 vacancies. In 2021, the Canyon County Clerk's Office had a 34.4% turnover rate, and in 2022 has had a 16.6% turnover rate. They historically receive few applications for clerk positions, with one position only recently being filled after being open since June of 2021 and receiving one application. These are not high paying jobs and they can be stressful and exhausting since clerks oftentimes deal with member of the public who are frustrated and mistreat clerks. It is already a challenge to hire and retain clerks, and creating additional work related to tracking down and correcting improperly filed complaints will only exacerbate these problems.

8. Clerks serve as gatekeepers for improperly submitted documents. Auto Accept would effectively eliminate this gatekeeping function that benefits litigants, District Judges, their staff, and the clerks. Eliminating this gatekeeping function could be extremely detrimental to litigants. Under the current process, a litigant has three days to correct a defect with a complaint if it is rejected by the Clerk's Office and the date of the original submission will still appear as the file-stamped date as the filing date relates back to the date of original submission. *See* Idaho Rule for Electronic Filing and Service 13. With Auto Accept, an issue with a submitted complaint may go unnoticed for a substantial period of time; filing issues will only be addressed if they are brought to the District Court's attention. If a litigant files their complaint close to the expiration of the statute of limitations, they could be barred from pursuing the claim if their complaint had a filing error that was not addressed on the front end.

9. Eliminating the clerk's gatekeeping function is harmful to all litigants, but it could be especially harmful to *pro se* litigants who are not as familiar with filing requirements. This is especially concerning in the Third Judicial District because there are a lot of complaints that attorneys and litigants intend to file in Ada County that inadvertently get filed in Adams County. Without clerk review to catch this common mistake, attorneys and litigants are at risk of potentially missing a statute of limitations if the error goes unnoticed. If a complaint was filed in the wrong venue (i.e. a venue other than what was listed on the face of the complaint), this would need to be remedied either through dismissal of the complaint or a change of action. The first option could adversely impact litigants, particularly if they filed the complaint on or near the statute of limitations, as discussed above. The second option adversely impacts the courts because judicial action would be required to transfer the case to the venue listed on the face of the complaint.

10. Auto Accept would also present issues with refunding filing fees if an action is filed in the wrong county. Currently, filing fees are processed by Tyler and Tyler transfers payment to the District Court only if the complaint is accepted. If complaints were automatically accepted, payment would presumably be automatically received by the District Courts. This means the District Courts would have to dedicate personnel to issuing refunds for filing fees, which is a difficult and cumbersome process, as opposed to refunds being handled by Tyler.

11. The Press Review Queue is concerning to me because it provides the press and public with access to newly submitted civil complaints before the Clerk's Office reviews and accepts them. The press and public should not have access to newly submitted complaints before the District Courts have access to them. A complaint is not an official court document until it has been accepted (file stamped and placed in the case management system), and the District Courts should not be publishing documents (including pleadings that potentially include confidential


information or that should have been filed under seal) that have not been reviewed and accepted by a clerk.

12. Providing the press and public with access to documents that have not been reviewed and accepted is also dangerous because an individual could inadvertently or maliciously submit a complaint with confidential information, such as social security numbers, birthdates, bank account information, etc. This information will be available to the press and public during the entire time the complaint sits in the Press Review Queue. Further, filing errors could result in cases that were supposed to be filed under seal being available in the Press Review Queue.

13. I understand the importance of providing the public and press with timely access to newly submitted civil complaints. The Third Judicial District also needs to ensure that litigants' rights are protected. This includes ensuring complaints are reviewed by clerks so any filing errors can be timely addressed on the front end. This also includes ensuring that individuals' personal information is not made available to the press and public. Providing CNS with *immediate* access to newly submitted civil complaints via Auto Accept or the Press Review Queue substantially impairs the Third Judicial District's ability to serve and protect the individuals who access the court system.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 9th day of December, 2022.



Jamie Robb

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina

amberdina@givenspursley.com

Katherine A. Keating

katherin.keating@bclplaw

Jonathan G. Fetterly

jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukeevett.com
Molly E. Mitchell
ISB#10035; mem@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

DECLARATION OF SHELLI TUBBS

I, Shelli Tubbs, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.
2. I serve as the Trial Court Administrator for the State of Idaho's Fifth Judicial District.
3. As a Trial Court Administrator, I am aware that each county Clerk's Office is responsible for reviewing filings submitted through File & Serve, which is a software platform available to the public. Once documents arrive in File & Serve, clerks perform a ministerial review of the filings to ensure they meet the requirements established by the Idaho Supreme Court to enter

DECLARATION OF SHELLI TUBBS - 1

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the court system as official records. This includes confirming, if applicable, the correct filing fee has been paid, the necessary signatures are included, the case is being submitted in the appropriate jurisdiction, and that the submitted document indicates the correct court division, e.g. magistrate or district court. If the ministerial aspects of the filing are correct, the Clerk's Office accepts the document for filing, a file stamp is affixed to the document, and the filing is transferred to Case Manager, which houses the official dockets of each county court. Once in Case Manager, an accepted complaint is now filed as part of the official court record. The District Judges do not participate in this process, with the exception of whether to grant filing fee waiver applications submitted under Idaho Rule of Civil Procedure 10.1.

4. I understand that in this lawsuit, CNS claims Sara Omundson, in her official capacity as Administrator Director of Idaho Court, should be compelled to either enable Tyler's Auto Accept function or implement a Press Review Queue. Either option would provide CNS with immediate access to newly submitted civil complaints before they have been reviewed or accepted for filing by a county clerk.

5. Under Auto Accept, the complaint would immediately be part of the official record even if the applicable filing fee had not been paid or there were other errors with the submission, such as filing in the wrong jurisdiction.

6. Judicial action would be required to address improperly submitted documents that are automatically accepted into the case management system. This would include preparing orders and conducting hearings to strike improperly submitted complaints, otherwise remove them from the case management system, or to redact already filed documents. This is inefficient and would increase the workload of District Judges, their court staff, and clerks.

7. The clerk's offices are funded through filing fees, so it is imperative that filing fees

are actually collected. With Auto Accept, a complaint would be automatically accepted even though a filing fee had not been paid. Thus, Auto Accept limits the clerk's ability to collect a filing fee and will simultaneously require judicial and clerk action in cases where the complaint was submitted without a filing fee. If the wrong filing fee is paid, it takes a substantial amount of time and resources to correct these errors once a complaint has been accepted for filing. Thus, Auto Accept would put a strain on judicial resources based on the issues it presents with collecting filing fees and correcting errors related to filing fees.

8. Placing extra ministerial burdens on the clerks is problematic for Clerk's Offices that are already struggling to hire and retain sufficient personnel. There have been job vacancies and staffing shortages in Clerk's Offices throughout the Fifth Judicial District since the beginning of the COVID-19 pandemic. The Clerk's Offices do not have a clerk or clerks whose job responsibilities are solely dedicated to reviewing newly submitted documents. Clerks are responsible for answering phone calls, helping pro se litigants at the counter, and reviewing newly submitted documents. Clerks also review notes from attorneys related to newly submitted documents (e.g. if something needs to get in front of a judge for an expedited hearing). Auto Accept would eliminate the ability to include a note with a newly submitted document since submissions would automatically go to Case Manager without clerk review.

9. Clerks serve as gatekeepers for improperly submitted documents. Auto Accept would effectively eliminate this gatekeeping function that benefits litigants, District Judges, their staff, and the clerks. Eliminating this gatekeeping function could be extremely detrimental to litigants. Under the current process, a litigant has three days to correct a defect with a complaint if it is rejected by the Clerk's Office and the date of the original submission will still appear as the file-stamped date because the filing date relates back to the date of the original submission. *See*

Idaho Rule for Electronic Filing and Service 13. With Auto Accept, an issue with a submitted complaint may go unnoticed for a substantial period of time; filing issues will only be addressed if they are brought to the District Court's attention. If a litigant files their complaint close to the expiration of the statute of limitations, they could be barred from pursuing the claim if their complaint had a filing error that was not addressed on the front end. If a complaint was filed in the wrong venue (i.e. a venue other than what was listed on the face of the complaint), this would need to be remedied either through dismissal of the complaint or a change of action. The first option could adversely impact litigants, particularly if they filed the complaint on or near the statute of limitations, as discussed above. The second option adversely impacts the courts because judicial action would be required to transfer the case to the venue listed on the face of the complaint.

10. Eliminating the clerk's gatekeeping function is harmful to all litigants, but it could be especially harmful to *pro se* litigants who are not as familiar with filing requirements.

11. The Press Review Queue is concerning to me because it provides the press and public with access to newly submitted civil complaints before the Clerk's Office reviews and accepts them. The press and public should not have access to newly submitted complaints before the District Courts have access to them. A complaint is not an official court document until it has been accepted (file stamped and placed in the court's case management system), and the District Courts should not be publishing documents (including pleadings that potentially include confidential information or that should have been filed under seal) that have not been reviewed and accepted by a clerk.

12. Providing the press and public with access to documents that have not been reviewed and accepted is also dangerous because an individual could inadvertently or maliciously submit a complaint with confidential information, such as social security numbers, birthdates, bank

account information, etc. This information will be available to the press and public during the entire time the complaint sits in the Press Review Queue. Further, filing errors could result in cases that were supposed to be filed under seal being available in the Press Review Queue.

13. I understand the importance of providing the public and press with timely access to newly submitted civil complaints. The Fifth Judicial District also needs to ensure that litigants' rights are protected. This includes ensuring complaints are reviewed by clerks so any filing errors can be timely addressed on the front end. This also includes ensuring that individuals' personal information is not made available to the press and public. Providing CNS with *immediate* access to newly submitted civil complaints via Auto Accept or the Press Review Queue substantially impairs the Fifth Judicial District's ability to serve and protect the individuals who access the court system.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 29 day of November, 2022.



Shelli Tubbs

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina

amberdina@givenspursley.com

Katherine A. Keating

katherin.keating@bclplaw

Jonathan G. Fetterly

jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukeevett.com
Molly E. Mitchell
ISB#10035; mem@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

**DECLARATION OF TAMMIE
WHYTE**

I, Tammie Whyte, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.
2. I serve as the Trial Court Administrator for the State of Idaho's Seventh Judicial District.
3. As the Trial Court Administrator, I am aware that each county Clerk's Office is responsible for reviewing filings submitted through File & Serve, which is a software platform available to the public. Trial Court Administrators are responsible for carrying out administrative duties of the District Court as delegated by the Administrative Judge for that particular judicial

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district. ICAR 43. Trial Court Administrators must be familiar with statewide standardized business processes for court clerks, as well as local practices, and assist where necessary to ensure there is alignment between the two. Once documents arrive in File & Serve, clerks perform a ministerial review of the filings to ensure they meet the requirements established by the Idaho Supreme Court to enter the court system as official records. This includes confirming, if applicable, the correct filing fee has been paid, the necessary signatures are included, the case is being submitted in the appropriate jurisdiction, and that the submitted document indicates the correct court division, e.g. magistrate or district court. If the ministerial aspects of the filing are correct, the Clerk's Office accepts the document for filing, affixes a file stamp, and the filing is transferred to Case Manager, which houses the official dockets of each county court. Once in Case Manager, an accepted complaint is filed as part of the official court record. The District Judges do not participate in this process, with the exception of whether to grant filing fee waiver applications submitted under Idaho Rule of Civil Procedure 10.1.

4. The clerk review process was in place prior to the transition to e-filing. With paper filings, the filer would hand the clerk their submission (e.g. a complaint and summons), the clerk would then review the submission to make sure all filing requirements were met (e.g. correct filing fee was included, filed in the correct jurisdiction, etc.). The clerk would either accept the submission—at which point it was file stamped and docketed in the official court record—or reject the submission and provide the filer with an explanation of what needed to be fixed for the complaint to be accepted.

5. I understand that in this lawsuit, CNS claims Sara Omundson, in her official capacity as Administrator Director of Idaho Court, should be compelled to either enable Tyler's Auto Accept function or implement a Press Review Queue. Either option would provide CNS with

DECLARATION OF TAMMIE WHYTE- 2

immediate access to newly submitted civil complaints before they have been reviewed or accepted for filing by a county clerk.

6. Under Auto Accept, the complaint would immediately be part of the official record even if the applicable filing fee had not been paid or there were other errors with the submission, such as filing in the wrong jurisdiction. Judicial action would be required to address improperly submitted documents that are automatically accepted into the case management system.

7. This is a serious concern because Auto Accept would increase the already full workload of District Judges and their court staff because they would have to spend time addressing improperly submitted complaints that would have been fielded by the clerks under our current system (e.g. by preparing and entering an order striking the pleading). This puts District Judges in the difficult position of determining what action should be taken if a complaint is improperly submitted. There are twenty judges in the Seventh Judicial District, including magistrate judges. Only the six District Judges have a law clerk or staff attorney. Magistrate Judges in the Seventh Judicial District will occasionally be assigned cases where the amount in controversy is \$25,000 (as opposed to the \$10,000 threshold that invokes the jurisdiction on the District Court). Magistrate Judges do not have law clerks. Thus, although some judges may be able to delegate certain tasks to their law clerks related to correcting improperly submitted documents, many judges do not have this option and will have to spend their own time correcting erroneous filings. In either scenario, automatically routing improper submissions into Case Manager via Auto Accept puts a strain on judicial resources. The clerks and judges are extremely busy, and adding to their already heavy workload would require additional resources such as hiring additional clerks.

8. For decades, and long before the transition to e-filing, clerks have served as gatekeepers for improperly submitted documents. Auto Accept would effectively eliminate this

DECLARATION OF TAMMIE WHYTE- 3

gatekeeping function that benefits litigants, District Judges, their staff, and the clerks. Eliminating this gatekeeping function could be extremely detrimental to litigants. Under the current process, a litigant has three days to correct a defect with a complaint if it is rejected by the Clerk's Office and the date of the original submission will still appear as the file-stamped date as the filing date relates back to the date of original submission. *See Idaho Rule for Electronic Filing and Service* 13. With Auto Accept, an issue with a submitted complaint may go unnoticed for a substantial period of time. If a litigant files their complaint close to the expiration of the statute of limitations, they could be barred from pursuing the claim if their complaint had a filing error that was not addressed on the front end. If a complaint was filed in the wrong venue (i.e. a venue other than what was listed on the face of the complaint), this would need to be remedied either through dismissal of the complaint or a change of action. The first option could adversely impact litigants, particularly if they filed the complaint on or near the statute of limitations, as discussed above. The second option adversely impacts the courts because judicial action would be required to transfer the case to the venue listed on the face of the complaint.

9. Eliminating the clerk's gatekeeping function is harmful to all litigants, but it could be especially harmful to *pro se* litigants who are not as familiar with filing requirements. *Pro se* litigants are also less likely to be aware of the requirement that sealed documents need to be "filed conventionally" (i.e. paper filed). IREFS 5(h). This makes them more vulnerable to exposing confidential information if they fail to follow the requirements for filing confidential documents.

10. It is my understanding that the Press Review Queue would provide members of the press and public with access to newly submitted complaints before they are reviewed and accepted by the Clerk's Office.

11. The Press Review Queue is concerning to me because it provides the press and

public with access to newly submitted civil complaints before the Clerk's Office reviews and accepts them. The press and public should not have access to newly submitted complaints before the District Court judges have access to them.

12. I am also concerned about the implicit representation that a document in the Press Review Queue has been filed or is otherwise an official court document. Members of the press and public may not understand such documents have not been reviewed or accepted by clerks and will not become part of the record if they are rejected. This could result in the press and/or members of the public reporting on complaints available in the Press Review Queue as if they are official court documents, when in reality no complaint in the Press Review Queue is an official court document because it has not been reviewed and accepted for filing. This could erode public confidence in the judiciary if members of the press and public falsely report on complaints in the Press Review Queue as if they are official court records.

13. There is a potential for both litigants and attorneys misusing the Press Review Queue or Auto Accept to publish confidential or inflammatory information. As an example, an attorney representing a defendant in a high profile criminal case in the Seventh Judicial District intentionally filed documents that contained inflammatory information about the prosecutor, and then contacted the Clerk's Office to demand this information be published on the Supreme Court's cases of interest website immediately. With Auto Accept or the Press Review Queue, there is no way to prevent malicious and improper filings from being made available to the public. This is especially concerning since many bloggers and other purported members of the media are looking for information that will generate traffic to their website regardless of its accuracy. There are heightened concerns about the dissemination of newly submitted complaints that contain inflammatory or confidential information since these are the types of complaints that can

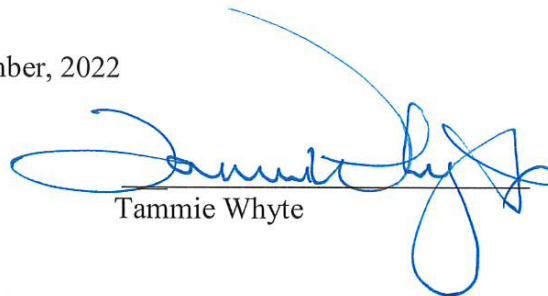
DECLARATION OF TAMMIE WHYTE- 5

essentially be used as clickbait.

14. I understand the importance of providing the public and press with timely access to newly submitted civil complaints. The Seventh Judicial District also needs to ensure that litigants' rights are protected. This includes ensuring that complaints are reviewed by clerks so any filing errors can be timely addressed. This also includes ensuring that individuals' personal information is not made available to the press and public. Providing CNS with *immediate* access to newly submitted civil complaints via Auto Accept or the Press Review Queue substantially impairs the Seventh Judicial District's ability to serve and protect the individuals who access the court system.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 14th day of December, 2022



Tammie Whyte

DECLARATION OF TAMMIE WHYTE- 6

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina

amberdina@givenspursley.com

Katherine A. Keating

katherin.keating@bclplaw

Jonathan G. Fetterly

jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukeevett.com
Molly E. Mitchell
ISB#10035; mem@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-DCN

DECLARATION OF ANGIE WOOD

I, Angie Wood, declare as follows:

1. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.

2. I serve as the Lead Clerk for Madison County, Idaho. I have worked for the Idaho Courts for approximately 32 years.

3. I am aware that at times it has taken the Madison County Clerk's Office longer to review and process newly submitted civil complaints in comparison to other counties across the State of Idaho. This has been due to staffing shortages described herein, which we have been diligently trying to fix.

DECLARATION OF ANGIE WOOD - 1

ER-2521

4. Madison County has five full time clerks and one clerk who works less than part time (usually under 10 hours per week).

5. Because Madison is a small county, we do not have any clerks whose job duties are dedicated to reviewing and processing submissions. All clerks are responsible for answering phone calls, balancing money, and assisting people at the counter.

6. In addition, the clerks serve as in-court clerks for Magistrate and District Court Judges. One clerk is dedicated to assisting our Magistrate Judge every day of the week.

7. Madison County's District Judge, the Honorable Steven Boyce, is typically here on Mondays, but sometimes there are court proceedings that will require Judge Boyce to be here the entire week. One clerk serves as the in-court clerk when Judge Boyce is in town. Even when Judge Boyce is not in Madison County, at least a few hours of clerk time per day are dedicated to in-court clerk work on his cases.

8. We have three treatment courts with three different Judges in Madison County. Clerk time is dedicated to assisting those Judges.

9. Although we do not have a dedicated clerk for reviewing submissions, we have one clerk who handles a lot of the reviewing. This clerk also serves as the Jury Commissioner for Madison County and also assists with the tasks described above.

10. Unfortunately, two of our five clerks have had health issues that have required them to be out of office more than expected. Based on the in-court clerk duties described above, this leaves our office very short-staffed when it comes to reviewing submissions if one or more clerks are out of the office with health issues or for any other reasons.

11. Madison County has been actively looking for other clerks. Very few qualified applicants have applied. We are actively looking into other ways to advertise for the clerk positions

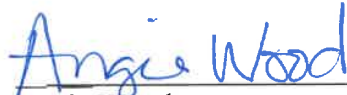
DECLARATION OF ANGIE WOOD - 2

so we can attract more applicants.

12. The clerks in Madison County work diligently to review newly submitted complaints as soon as possible, but they have to balance document review with their other job duties. This does not always allow for prompt review of newly submitted complaints. However, Madison County is working to rectify the situation by trying to hire additional personnel and, in the meantime, is making the most efficient use of the clerks it has so they can accomplish all of their job duties, which extend far beyond the review of submitted complaints, in a timely manner.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 15th day of December, 2022.


Angie Wood

DECLARATION OF ANGIE WOOD - 3

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina

amberdina@givenspursley.com

Katherine A. Keating

katherin.keating@bclplaw

Jonathan G. Fetterly

jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

Keely E. Duke
ISB #6044; ked@dukevett.com
Molly E. Mitchell
ISB#10035; mem@dukevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-REP

**DECLARATION OF TERRY
DERRICK**

I, TERRY DERRICK, and pursuant to 28 U.S.C. § 1746, I declare as follows:

1. My name is Terry Derrick, and I am an adult resident and citizen of the State of Texas. I am currently the General Manager of Courts at Tyler Technologies, Inc. (“Tyler”). I have also previously served as General Manager of eSolutions for Tyler and Operations Director of eSolutions for Tyler. In these roles, I am familiar with and was involved in the management of the professional services and support organizations at Tyler that are responsible for, among other things, Tyler’s electronic filing platform currently known as eFile & Serve. I make this Declaration based on my own personal knowledge and I am competent to the matters herein.

2. On November 10, 2022, I served as Tyler’s designated corporate representative in

DECLARATION OF TERRY DERRICK - 1

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connection with subpoenas and deposition notices served in this matter in accordance with Rules 30(b)(6) and 45. Among other topics, my testimony included information regarding Tyler's eFile & Serve platform and various functionality related-thereto that I understand to be at issue in this case. That functionality includes two specific tools: (1) the Press Review Tool; and (2) the Auto-Accept Review feature.

3. In response to the 30(b)(6) notice from Sara Omundson and as a follow-up to my November 10, 2022 deposition, I am providing additional information regarding the Press Review Tool and the Auto-Accept Review feature.

4. Attached as Exhibit 1 to this Declaration is a true and correct copy of an Excel spreadsheet that was prepared under my supervision and at my direction by individuals at Tyler. This spreadsheet titled "Press Review Tool Case Types by Jurisdiction" identifies each jurisdiction that currently utilizes the Press Review Tool. The second column of Exhibit 1 also identifies the types of cases in each jurisdiction that are made available via the Press Review Tool.

5. Attached as Exhibit 2 to this Declaration is a true and correct copy of an Excel spreadsheet that was prepared under my supervision and at my direction by individuals at Tyler. This spreadsheet titled "Auto Accept Config - 111922" identifies each jurisdiction that currently utilizes the Auto-Accept Review feature. In addition, the spreadsheet identifies the various conditions under which each jurisdiction has configured its eFile & Serve system to auto-accept a filing. Those conditions include (1) a Case Category (*e.g.*, Civil, Family, Probate, etc.); (2) a Case Type (*e.g.*, Small Claims, Debt/Collections, etc.); (3) a Filing Code (*e.g.*, Affidavit, Notice, Objection, etc.); (4) a Judicial Officer (*e.g.*, a specific judge); (5) a Filing Firm (*e.g.*, The Smith Law Firm, etc.); (5) a Filing Component (*e.g.*, an optional or required fee); (6) a Document Type (*e.g.*, Confidential, Public, etc.); (7) a Payment Type (*e.g.*, cash or credit); (8) a Filer Type (*e.g.*,

Batch Filings); and (9) a Party Type (*e.g.*, Plaintiff, Defendant, etc.).

6. While the Auto-Accept Review feature can be configured to account for all of these various conditions, the conditions under which various jurisdictions utilize the auto-accept feature vary. Many jurisdictions focus their auto-accept functionality on conditions related to the Case Category, Case Type, and Filing Code.

7. Exhibit 2 identifies the applicable jurisdiction and describes each condition it has configured in the column labeled “Condition.” The spreadsheet further identifies what specific condition criteria must be met before the Auto-Accept Review feature is triggered. Where a column says “NULL,” that reflects that the jurisdiction did not specify any condition criteria for that category.

8. For example, line 3 of the spreadsheet identifies the jurisdiction as Fresno County and identifies the condition’s description as “Fresno Juvenile Rush Auto Receipt.” The only configured criteria for this condition is located in the Filing Code column as “Juvenile Rush (Hearing Within 2 Days).” The remaining columns possess “NULL” values. This means that if a document is e-filed in Fresno County with the Filing Code “Juvenile Rush (Hearing Within 2 Days)”, the eFile & Serve system is configured to auto-accept that filing via the Auto-Accept Review feature.

9. Line 46 identifies the jurisdiction as Los Angeles County – Adoptions. The eFile & Serve system is configured to auto-accept filings that are “Subsequent Filings”—meaning not the initial filings in a matter—and that are filed with the filing code “Home Study from Agency.”


10.

11. The information included on Exhibits 1 and 2 is confidential and proprietary to Tyler and to the various jurisdictions that have chosen to configure their Press Review Tool and/or

Auto-Accept Review feature as identified on the spreadsheets. These spreadsheets are designated CONFIDENTIAL pursuant to the terms of the Protective Order entered by this Court.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 15 day of December, 2022.


TERRY DERRICK

CERTIFICATE OF SERVICE

I hereby certify that on ___day of December, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber K. Dina
Katherine A. Keating
Jonathan G. Fetterly

amberdina@givenspursley.com
katherin.keating@bclplaw
jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

DECLARATION OF TERRY DERRICK - 5

506239974.4

Exhibit F

Deposition of 30(b)(6) Terry Derrick - Vol. II

Courthouse News Service v. Omundson

November 10, 2022



206.287.9066 | 800.846.6989

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

www.buellrealtime.com

email: info@buellrealtime.com



Courthouse News Service v. Omundson

30(b)(6) Terry Derrick - Vol. II

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,)

Plaintiff,)

v.) No. 1:21-CV-00305-REP

SARA OMUNDSON, in her official)
capacity as Administrative)
Director of Idaho Courts,)

Defendant.)

30(b)(6) DEPOSITION UPON ORAL EXAMINATION

OF TYLER TECHNOLOGIES

REPRESENTED BY TERRY DERRICK - VOLUME II

Taken at Plano, Texas
(Conducted via Videoconference.)

DATE TAKEN: November 10, 2022
REPORTED BY: Nicole A. Buldis, RPR
AZ No. 50955 | CA No. 14441 | WA No. 3384

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30(b)(6) DEPOSITION OF TERRY DERRICK

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A P P E A R A N C E S

FOR PLAINTIFF:

(via Zoom) Jonathan G. Fetterly
Katherine A. Keating
BRYAN CAVE LEIGHTON PAISNER LLP
3 Embarcadero Center, 7th Floor
San Francisco, CA 94111
(415) 675-3400
jon.fetterly@bclplaw.com
katherine.keating@bclplaw.com

FOR DEFENDANT:

(via Zoom) Keely E. Duke
Molly E. Mitchell
DUKE EVETT, PLLC
1087 W. River Street, Suite 300
PO Box 7387
Boise, ID 83707
(208) 342-3310
ked@dukeevett.com
mem@dukeevett.com

FOR TYLER TECHNOLOGIES
AND WITNESS:

(via Zoom) Beth W. Petronio
K&L GATES LLP
1717 Main Street, Suite 2800
Dallas, TX 75201
(214) 939-5815
beth.petronio@klgates.com

ALSO PRESENT:

(via Zoom) SARA OMUNDSON, Idaho Courts
--o0o--

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REPORTED REMOTELY FROM MARICOPA COUNTY, ARIZONA

Thursday, November 10, 2022; 1:24 p.m.

--o0o--

TERRY DERRICK, witness herein, having been
first duly sworn on oath,
was examined and testified
as follows:

EXAMINATION

BY MS. DUKE

**Q. Mr. Derrick, it's always hard to go second in
these because I might bounce around a bit, but I'll do
my best to try to keep it in a logical fashion selfishly
for me and then also to hopefully help you.**

**So same -- same general rules that
Mr. Fetterly just provided to you. If I ask you a
question that you don't understand, would you please let
me know?**

A. Of course.

**Q. If you're going on to answer my questions,
we'll assume then that you understood them; is that
fair?**

A. Yeah. Sure.

Q. Excellent.

1 (Pages 110 to 113)

BUELL REALTIME REPORTING, LLC
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ER-2532

1 All right. So let me talk about the State of
2 Idaho real quick. Do you have any particular, I guess,
3 responsibility or involvement with the State of Idaho
4 from a Tyler perspective, currently?
5 A. Yes, to an extent. You know, the new role
6 that I am currently in, my responsibility is to oversee
7 the direction for some of our products by which the
8 State of Idaho is using. So in that regards, yes.
9 Q. Which products would those be?
10 A. Our Enterprise Justice platform, the new case
11 management system. Odyssey, if you will, the new name
12 for that, I should say. Same product, new name. The
13 jury product for Tyler, the -- and I think those are the
14 two primary ones.
15 Q. Prior to that, so let's just say from 2017
16 forward, what involvement or role did you have with
17 respect to the State of Idaho through Tyler?
18 A. Sure. As the general manager of the
19 eSolutions business line, it was oversight into the
20 product and solution and business direction for our
21 eFile & Serve platform, the Guide & File platform, and
22 I believe those would be the two that would be relevant
23 here.
24 Q. All right. In your work, let's say, with
25 File & Serve, have you ever talked with any of the Idaho

1 clerks as far as you know?
2 A. Yes, a long time ago.
3 Q. And do you recall what the general nature of
4 those conversations was?
5 A. Yeah. During the initial implementation of
6 Idaho for the e-filing project, several years ago, I
7 helped do project kick-off meetings and participate as
8 kind of the program director during that time.
9 Q. All right. And in your current role, have you
10 been having any conversations with the clerks of the
11 court?
12 A. I have not, no.
13 Q. At any point in time, have you sat down and
14 talked with any of the judges in the state of Idaho with
15 respect to any of Tyler's products?
16 A. No.
17 Q. Sorry, I didn't hear you if you answered.
18 A. I'm sorry. No, I -- no, I have not.
19 Q. Okay.
20 A. Keely, is there a way that you could maybe
21 shut the blinds behind you?
22 Q. Oh, yeah. I sure can.
23 Is that better?
24 A. It isn't. I'm sorry.
25 Q. Oh, it must be going right through the -- that

1 one part, so let me see if I can shift how I'm sitting.
2 How's that sound?
3 A. That'd be great.
4 Q. What is really great is we have sun in Boise
5 today.
6 All right. How's that? Better?
7 A. Perfect. Yes, thank you very much.
8 Q. Oh, my gosh. Of course.
9 All right. So you were asked a number of
10 questions by Mr. Fetterly with respect to that
11 PowerPoint, if you would, of the -- that was attached to
12 your deposition notice.
13 A. Yes.
14 Q. Do you recall that?
15 A. Yes, I do.
16 Q. Let me -- let me pull that up here. We had it
17 as 38, I think. It's our -- our numbering was all off
18 here. Just bear with me for a second.
19 A. Sure.
20 (Pause in the proceedings.)
21 MR. FETTERLY: Keely, I think we also
22 have it marked as our Exhibit 8, if you'd rather not use
23 the subpoena attachment.
24 MS. DUKE: Yeah. I appreciate that.
25 Thank you.

1 What I'll do is I'll just mark our notice
2 as Exhibit 38.
3 (Exhibit No. 38 marked.)
4 Q. (By Ms. Duke) So I'm going to show you here, in
5 just one moment, Exhibit 38.
6 And Sara will be joining by phone, so if you
7 see another name pop up, that's why. She's got to run
8 and get her kiddo.
9 All right. Can you see Exhibit 38?
10 A. Nothing is showing on the screen.
11 Q. Oh, it's telling me it wants to quit Zoom.
12 Okay. I'll be back.
13 A. Oh, wait. It's showing now.
14 Q. Is it? Okay.
15 A. Yeah, the notice of -- yeah -- deposition
16 amended, Tyler 30(b)(6); is that right?
17 MR. FETTERLY: Yeah. I'm not seeing it
18 on my end.
19 MS. DUKE: Well, I -- it literally just
20 locked me out. Now it won't even show me. I'm not sure
21 why. Good old Zoom.
22 THE STENOGRAPHER: Do you want to try
23 logging out and logging back in?
24 MS. DUKE: Yeah. That's what I'm going
25 to try. Sorry. I'll be back.

1 MR. FETTERLY: I'll be on standby.

2 (Off the record due to technical
3 difficulties.)

4 **Q. (By Ms. Duke) Let me go ahead now and try to**
5 **show you what I was trying to show you when it all**
6 **decided to go haywire.**

7 MS. DUKE: Do you want to pull that up,
8 the notice of depo and the PowerPoint?

9 **Q. (By Ms. Duke) All right. Molly is going to**
10 **start sharing the screen here and we'll go to the**
11 **PowerPoint first. Perfect.**

12 **All right. First, I understand this**
13 **PowerPoint was not put together by you; correct?**

14 A. Yes, that's correct.

15 **Q. A Mr. Acosta prepared it?**

16 A. Yes, that's correct.

17 **Q. This is not a PowerPoint that is based on any**
18 **Idaho data; is that correct?**

19 A. That's right.

20 **Q. And this is a PowerPoint that was prepared by**
21 **Tyler?**

22 A. It is, yes.

23 **Q. And it's not a PowerPoint that the Idaho**
24 **Courts or Ms. Omundson at any point in time provided any**
25 **input as to any of the language contained within it; is**

1 **Did I read that correctly?**

2 A. You did.

3 **Q. When -- when Tyler is representing "free,"**
4 **what is Tyler meaning there?**

5 A. It means it's included as part of the e-filing
6 solution. So our customers who pay for the e-filing
7 solution get that Auto-Accept function as part of that
8 solution without additional expense beyond the -- the
9 e-filing solution in itself.

10 **Q. And that is not representative of the cost**
11 **that will be incurred by courts if they were to use the**
12 **Auto-Accept function; correct?**

13 MR. FETTERLY: Objection. Vague and
14 ambiguous. Lacks foundation.

15 THE DEPONENT: I guess I don't understand
16 the question. Can you maybe say it again?

17 **Q. (By Ms. Duke) Sure. Happy to.**

18 **So, obviously, that's from Tyler's side. It's**
19 **a free part of their program. What I'm asking is if it**
20 **were something that was utilized in the state of Idaho,**
21 **Tyler has not done any type of evaluation as to the cost**
22 **to the State of Idaho to use Auto-Accept in the event**
23 **there are issues with it?**

24 A. Yeah, that's correct. We haven't -- we have
25 no visibility into any expense that could be endured by

1 **that fair?**

2 A. Yeah, that's fair.

3 **Q. What's your understanding of why this**
4 **PowerPoint was provided to Ms. Omundson or the court**
5 **system in Idaho?**

6 A. I'm not sure why it was provided to anyone in
7 Idaho.

8 **Q. If you look to the -- and it looks like it was**
9 **prepared on July 1 of 2022?**

10 A. Yes, that's correct.

11 **Q. Do you know if this -- if this PowerPoint is**
12 **being used anywhere else in the country?**

13 A. It was created for the State of Texas by
14 request by the Office of Court Administration and the
15 Judicial Council for Information Technology. I'm not
16 sure who else would -- would use this document.

17 **Q. And do you know why the State of Texas**
18 **requested this PowerPoint?**

19 A. I don't.

20 **Q. Let's go ahead and move to the second page of**
21 **it, and we'll talk about Auto-Accept first. You were**
22 **asked a number of questions related to the Auto-Accept**
23 **column. And that first sentence there, it says:**
24 **"Auto-Accept Review is a free out-of-the-box e-filing**
25 **function."**

1 the State or by the Courts. This is just speaking to
2 the availability of that function.

3 **Q. And in order to understand what the costs of**
4 **an Auto-Accept would be, Tyler -- to a court system,**
5 **aside from Tyler providing it free, Tyler would defer to**
6 **the various courts, including the Idaho State Court, as**
7 **to what they anticipate their internal costs would be as**
8 **a result of using something like Auto-Accept; is that**
9 **fair?**

10 A. Yes, it is.

11 **Q. In addition, there's words used in this --**
12 **this first page. Given this was prepared for the State**
13 **of Texas, I'll assume that the Idaho rules of e-filing**
14 **were in no way considered in creating or providing the**
15 **language that's included in this PowerPoint; is that**
16 **correct?**

17 A. I'm not sure. We would have to ask the
18 author, but, yeah, I am -- I'm not sure.

19 **Q. Okay. Any reason to believe that this --**
20 **given that this was prepared for the State of Texas,**
21 **that the Idaho rules of electronic filing would have**
22 **been considered in its preparation?**

23 A. No reason to believe that at all.

24 **Q. Are you in any way familiar with the Idaho**
25 **rules of electronic filing?**

Page 122

1 A. Not -- not very familiar at all.
2 **Q. Are you aware of how they define court**
3 **documents?**
4 A. No, I am not.
5 **Q. Are you aware of how the Idaho rules of**
6 **electronic filing define judicial documents?**
7 A. No, I am not.
8 **Q. With respect to this Auto-Accept portion, have**
9 **you talked -- or has anyone at Tyler talked with anyone**
10 **in the state of Idaho as to the resources it would take**
11 **Idaho's judicial clerks, judges, and court staff to**
12 **address any errors on the back end if something was**
13 **auto-accepted that should not have been?**
14 A. Not -- not to my knowledge.
15 **Q. Is Tyler aware of what judges -- well, strike**
16 **that.**
17 **Under the Auto-Accept, it's my understanding**
18 **that Auto-Accept means it would go from -- once it's**
19 **submitted to File & Serve by a user, it would**
20 **immediately transfer to the court's case management**
21 **system; is that correct?**
22 A. Well, immediately is a -- is a relative term.
23 The -- the process would be once the filer submits that
24 filing through the electronic filing service provider
25 portal, it would go to the EFM, the eFiling Manager.

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1 Once inside the eFiling Manager, it would be assessed
2 and evaluated against those Auto-Accept rules. And if
3 it met that criteria which was pre-configured by the
4 court or the clerk, then it would be accepted and then
5 transmitted in two directions, one to the case
6 management system and then back -- one file-stamped copy
7 back to the original filer who submitted it. I'm not
8 sure if that answers your question, but...
9 **Q. It does. I mean, when I say "immediately,"**
10 **I'm assuming that we're talking that's a matter of**
11 **seconds for it to go into the EFM and have whatever**
12 **program is -- has been put together to get it into the**
13 **case management system?**
14 A. That's correct. Yeah, a short duration.
15 **Q. Okay. And with respect to Tyler's**
16 **eFile & Serve, Tyler is -- is the one that -- that has**
17 **possession of those documents, meaning they're --**
18 **they're hosted by Tyler?**
19 MR. FETTERLY: Objection. Vague and
20 ambiguous as to "possession."
21 THE DEPONENT: The documents themselves
22 are contained within the eFiling Manager, which exists
23 inside of the AWS GovCloud. And they can be retrieved
24 and displayed from the review queue or the review tool
25 and the review tool that the clerks use to review them.

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1 **Q. (By Ms. Duke) Sure. Let me -- let me try to**
2 **phrase it a different way.**
3 **So when a document is submitted to**
4 **eFile & Serve by a submitter, Tyler is the one that is**
5 **responsible for the contractual arrangements with AWS as**
6 **to the hosting of those documents?**
7 A. Correct.
8 **Q. Then, once those documents -- let's say, it's**
9 **a complaint -- has been accepted by the court clerk and**
10 **it transfers to the case management system, when it**
11 **transfers to the case management system, that is then in**
12 **the state of Idaho actually hosted internally by the**
13 **court, the Idaho Supreme Court; correct?**
14 A. That is my understanding, yes.
15 **Q. And, therefore, the State of Idaho's court**
16 **system with respect to its case management system, that**
17 **system then is all the security protocols,**
18 **authentication items, those type -- backups, those types**
19 **of things are handled by the court staff, not by Tyler;**
20 **correct?**
21 A. For the case management system, yes, that's
22 correct.
23 **Q. When we go over to the File & Serve system, so**
24 **back to -- to Tyler's File & Serve system, it's Tyler**
25 **that is responsible for security, backups,**

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1 **authentication, those types of things; correct?**
2 A. Yes, that is correct.
3 **Q. Is Tyler -- or, are you aware, through Tyler,**
4 **of any of the security protocols that the Idaho Courts**
5 **have placed on the case management system that they are**
6 **hosting?**
7 A. I'm not familiar with the security that Idaho
8 uses on their on-premise case management solution, no.
9 **Q. And that's because that's up to the -- the**
10 **court as the hoster of that data?**
11 A. That's correct.
12 **Q. And how about backups? Is Tyler or are you**
13 **familiar with the backups that are generated, how**
14 **quickly, how many, what is backed up, anything like that**
15 **with respect to case management system?**
16 A. I'm not familiar with that, no.
17 **Q. From a file integrity monitoring standpoint**
18 **and ransomware protection, would Tyler be aware of what**
19 **Idaho's Courts have put into place to protect the case**
20 **management documents that they host?**
21 A. No.
22 **Q. Is Tyler aware of the advanced endpoint**
23 **protection that's in place with respect to the case**
24 **management documents that are hosted by the Idaho Court?**
25 A. No, I'm not aware of that.

4 (Pages 122 to 125)

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1 **Q. Would Tyler be involved or know about the 24/7**
2 **monitoring service of system logs, network traffic, or**
3 **any type of other anomalous or malicious behavior on the**
4 **servers for the case management system that's hosted by**
5 **the Idaho Supreme Court?**
6 A. No, I don't have visibility into those
7 practices.
8 **Q. Would Tyler have any information or knowledge**
9 **as to who the secured -- or the -- who the limited pool**
10 **of Idaho Supreme Court employees are that have access to**
11 **handling, addressing, or protecting the documents that**
12 **are housed within the case management system hosted by**
13 **the Idaho Supreme Court?**
14 A. No, we would not have visibility into that.
15 **Q. And would Tyler have any visibility or control**
16 **over the administrative access to devices and servers**
17 **and whether they required multifactor authentication**
18 **with respect to the case management documents that are**
19 **housed by the Idaho Supreme Court?**
20 A. No, we would not have that.
21 **Q. And to all of these questions that I just**
22 **asked, I'm assuming the reason Tyler would not have that**
23 **information, knowledge, or control, is because that is**
24 **all within the control and purview of the Idaho Supreme**
25 **Court as the hoster of the case management system?**

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1 A. That is correct.
2 **Q. So let's turn then to File & Serve. Given**
3 **that Tyler is the, you know, hoster and in control of**
4 **the documents related to -- or that have been submitted**
5 **to eFile & Serve, would Tyler be aware of the security**
6 **that's in place to protect those documents?**
7 A. Yes, we would.
8 **Q. And just describe generally what that security**
9 **is for File & Serve.**
10 A. I'll keep it very topical because describing
11 in detail is a security vulnerability in itself, but
12 just general security provisions that we have for the
13 e-filing platform are in our contractual agreement and
14 that would cover anything regarding the Press Review
15 Tool as well. Some of those are just general best
16 practices like vulnerability scans, virus scans,
17 firewall protection on -- on various tiers, things like
18 denial-of-service-attack protection, and -- and things
19 like that.
20 **Q. And what about backups to the EFS? And we can**
21 **limit it to Idaho. When I ask these questions right**
22 **now, I'll make it clear when I'm asking about globally**
23 **versus Idaho.**
24 **So with respect to a backup of the EFS system**
25 **for the State of Idaho, what type of backups occur at**

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1 **Tyler's direction?**
2 A. Sure. For Idaho specific, we do 15-minute
3 interval backups as well as daily and weekly backups.
4 **Q. So let me give an example. If -- let's --**
5 **let's say one of the dreaded things happens that we've**
6 **all now gotten cybersecurity insurance for -- knock on**
7 **wood -- and that is, let's say, that Tyler's security is**
8 **breached and there's a ransomware attack that occurs on**
9 **Idaho's File & Serve. Is it Tyler that is the one that**
10 **would have the -- the documents through backups that it**
11 **would then be able to -- to use those backups and get**
12 **Idaho back up and running?**
13 A. If the ransomware attack took place on
14 File & Serve?
15 **Q. Yes?**
16 A. Is that what you're saying?
17 **Q. Correct.**
18 A. Yes, then the backups within File & Serve
19 would be at Tyler's discretion.
20 **Q. And within Tyler's control?**
21 A. Correct.
22 **Q. Okay. So going back to -- to this**
23 **PowerPoint -- give me one second. Actually, a lot of**
24 **these were answered earlier, so let me just check those**
25 **off as I go.**

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1 **Oh, there was a question asked of you that in**
2 **Auto-Accept, one of the configurations that could be**
3 **used is to mark -- to have a configuration that allows**
4 **the -- the person who is submitting the document to be**
5 **filed to click a box to say confidential or public that**
6 **way Auto-Accept would know whether it can be**
7 **automatically transferred to the case management system**
8 **and filed within that case management system, or whether**
9 **it was confidential it would go into a different queue;**
10 **correct?**
11 A. I don't recall that question, but -- but sure.
12 **Q. Well, is that one of the configurations, is**
13 **you could use a confidential or public setting that the**
14 **users who are submitting documents to Tyler File & Serve**
15 **where they could either check it confidential or public?**
16 A. Yes, that is an option for a filer to make
17 that determination.
18 **Q. Okay. And is Tyler aware of any of the issues**
19 **when the State of Idaho was using an option to check**
20 **documents as confidential as to the issues and costs**
21 **that were created by allowing users to determine whether**
22 **something was or was not confidential?**
23 A. No, I'm not aware of those costs.
24 **Q. Are you aware of any of the issues that Idaho**
25 **faced when it had a time period where it permitted uses**

5 (Pages 126 to 129)

1 to decide whether something would be confidential or
2 public?

3 A. No, I'm not. I don't have visibility into
4 that.

5 Q. So just because it's a configuration that can
6 be used doesn't mean that it necessarily is something
7 that should be done; correct?

8 MR. FETTERLY: Objection. Vague and
9 ambiguous. Overbroad. Lacks foundation.

10 THE DEPONENT: All of our configurations
11 are based upon the determination and the -- and the
12 perspective of our partners -- our contract holders to
13 courts, so it's up to them as to what gets configured
14 and is deemed valuable or not.

15 Q. (By Ms. Duke) Okay. And so by Tyler testifying
16 and by you testifying earlier today to those numerous
17 configurations that Mr. Fetterly went through with you,
18 those are not configurations that you are specifically
19 stating would work for the State of Idaho; correct?

20 A. When you say would -- "would work," what do
21 you mean?

22 Q. Good point. Let me -- let me rephrase that.

23 So when you were asked a number of questions
24 by Mr. Fetterly regarding the number of configurations
25 that are available to courts to use, you are not stating

1 auto-transfer to the case management system if an
2 improper filing fee was made?

3 A. No, there wouldn't be.

4 Q. Okay. What if a filer was supposed to have a
5 filing fee and didn't have a filing fee included with a
6 complaint, would Tyler's Auto-Accept stop that filing
7 from being immediately transferred into the case
8 management system for the court?

9 A. It -- it would be based upon the
10 configuration, but it does not use logic to determine
11 whether something should or should not have it. It's
12 just based upon the configuration of the court.

13 Q. And by that, I think you mean if they say,
14 "I'm filing a personal injury complaint," and let's say
15 they don't submit their -- their filing fee with it, are
16 you saying that it would then get auto-accepted and into
17 case manager and then the court would need to deal with
18 the filing fee issue on the back end?

19 A. I'm saying it depends upon the configuration.
20 I can't tell whether or not it would be auto-accepted
21 unless we understood what the configuration was to -- to
22 evaluate that submission.

23 Q. And do you know what costs the State of Idaho
24 would incur to come up with the configurations to allow
25 Auto-Accept for any type of complaint?

1 that -- that Idaho -- you're not providing an opinion as
2 to whether those would be practical approaches for the
3 State of Idaho to use; is that correct?

4 A. That's right. I don't have intimate knowledge
5 to suggest that that would be a definitive positive
6 change. I think my statements were really around the
7 availability of those options.

8 Q. And that's -- that's said far better than the
9 question I asked.

10 So when you were talking about all the
11 configuration options, you were merely talking about
12 configurations that were available; correct?

13 A. Yes, that's correct.

14 Q. You were not making a recommendation of what
15 would or would not be useful or practical in Idaho's
16 courts; correct?

17 A. That's correct. I was not.

18 Q. Now, under the -- you were asked some
19 questions about the filing fee that -- that is used.
20 Under Auto-Accept, do you know if a user were to pay
21 what they thought was the filing fee, which was, you
22 know, run through your credit card processing company
23 and sufficient funds were in the account and they were
24 wrong about what the filing fee was, is there anything
25 in Auto-Accept to be configured that would stop that

1 A. No, I do not.

2 Q. Do you know whether any state using
3 Auto-Accept has been able to configure Auto-Accept so
4 that if someone doesn't file -- or doesn't pay their
5 filing fee, that that is somehow blocked from being
6 auto-accepted and transferred into the court's case
7 management system?

8 A. I'm not familiar with the -- the intimate
9 configurations of other states and how they've
10 configured specific conditions as they pertain to
11 Auto-Accept rules.

12 Q. So fair to say, as you sit here today, that
13 you do not know whether any state -- well, strike that.

14 Fair to say, as you sit here today, that you
15 don't know whether there is even a configuration
16 possibility of ensuring that a filing fee in fact
17 accompanies, let's say, a complaint filing; is that
18 correct?

19 A. Say that one more time?

20 Q. What I'm trying to get to is, as you sit here
21 today, you can't testify that you know that in fact if a
22 configuration is put in place that there is a
23 configuration that would actually say, "Oh, if you don't
24 provide your filing fee with this filing, it's not going
25 to go into Auto-Accept."

1 A. There is a condition by which can be
2 configured that -- that -- that would say that filings
3 with or without financials would be assessed, and so we
4 can compare the filing against that.

5 What we would not be able to do is determine
6 whether or not that was accurate, meaning filing fees
7 should have been assessed and they weren't, and then
8 it's smart enough to know that the filer made a mistake.
9 It doesn't have that logic built in.

10 **Q. All right. So -- I understand what you're**
11 **saying.**

12 **So what it does have the logic to do, is you**
13 **can say, yes, there should be a filing fee with this;**
14 **right?**

15 A. Correct. Yes.

16 **Q. But if it's, let's say, a \$243 filing fee and**
17 **the submitter of the document puts one penny down, it**
18 **wouldn't have the ability to say, "Oh, reject that,**
19 **that's not correct"?**

20 A. That's correct. It does not have that
21 capability.

22 **Q. And in those circumstances, if -- if that**
23 **occurred, the -- the filing is then in the case**
24 **management system, and it's then up to the clerks to**
25 **address that payment issue; is that correct?**

1 A. There may be some configuration mechanisms
2 that would prevent that scenario. We would have to
3 understand more about that scenario to know whether or
4 not that could occur. But if it did occur, then, yes,
5 it would be in the case management system and there
6 would be some sort of reaction to -- to address that
7 problem, and I -- I don't know what that is.

8 **Q. All right. With respect to Tyler's**
9 **File & Serve, it is my understanding from talking to my**
10 **clients that the service address in eFile & Serve is**
11 **not integrated with the case management system; is that**
12 **your understanding as well?**

13 A. The service address? I don't understand --

14 **Q. Correct.**

15 A. -- the question.

16 **Q. The service address meaning the submitter's**
17 **address for service or for --**

18 A. Oh, the --

19 **Q. -- who the document is being served on.**

20 A. Correct. The service email address is what
21 you're referring to?

22 **Q. Correct.**

23 A. Correct. That doesn't get transmitted into
24 Odyssey.

25 **Q. And when you say it does not get transmitted**

1 **into Odyssey, you mean Odyssey case management; correct?**

2 A. Yes, I apologize. The case management system.

3 **Q. Okay.**

4 **(Pause in the proceedings.)**

5 **Q. (By Ms. Duke) And on Auto-Accept, if**
6 **Auto-Accept is used, if a document meets the**
7 **configurations and is transferred into the case**
8 **management under Auto-Accept, does that mean it no**
9 **longer is within eFile & Serve?**

10 A. No, it'll stay within the eFiling Manager.

11 It would just be in an accepted state.

12 **Q. And how long does it stay in that eFiling**
13 **Manager?**

14 A. Sure. The data itself, the metadata, that
15 stays in the eFiling Manager into perpetuity, and the
16 documents would stay as long as the configuration states
17 it. So there's a configuration setting that would purge
18 the documents after a set duration and then it would be
19 whatever that configuration is set to.

20 **Q. All right. So there would be one version of**
21 **the file document in the e-file management system and a**
22 **second version of the documents in the court's case**
23 **management system; correct?**

24 A. Yes, that is correct.

25 **Q. Now, I think you cleared this up earlier, but**

1 **just to be clear, when a document is submitted to**
2 **File & Serve, Tyler handles the payment part of**
3 **processing, confirming that there are sufficient funds,**
4 **and noting that payment will be able to be made with**
5 **respect to the filing.**

6 A. That's correct.

7 **Q. And then the actual payment funds are not**
8 **transferred from Tyler to the court until the filing is**
9 **accepted by the court clerk and transferred into the**
10 **case management system; correct?**

11 A. That's correct. We don't capture the payment
12 until the clerk makes that acceptance determination on
13 the submission.

14 **Q. So, to be clear, the payment is not made with**
15 **respect to a filing until the clerk has accepted the**
16 **filing and it's being transferred into the case**
17 **management system?**

18 A. Yeah. The only edit I would say to that is
19 the payment isn't captured until the submission is
20 accepted, whether that be done by a clerk or through the
21 auto-acceptance process, but, yes.

22 **Q. Right. And so regardless whether that process**
23 **or a clerk reviewing it and accepting it is done,**
24 **payment does not occur until that document is being**
25 **transferred into the court's case management system.**

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1 A. Yeah. I think it's actually done right before
2 that document is transmitted. I -- I'd have to go back
3 to look at the order of operations after the acceptance
4 as to which of those takes place first, but it's within
5 that same workflow within that same duration, so we're
6 talking a matter of a few seconds.
7 **Q. Okay. And within those seconds, after either**
8 **Auto-Accept or a clerk accepts, that's when the -- the**
9 **payment is actually being taken from the submitter and**
10 **then provided to the court?**
11 A. That's correct.
12 **Q. Are you aware -- you mentioned there were 25**
13 **courts that use Auto-Accept. Do you recall that**
14 **testimony?**
15 A. I do.
16 **Q. How many courts, total, use just Tyler**
17 **File & Serve, not -- not limiting it to Auto-Accept or**
18 **press review queue?**
19 A. We have 27 states under contract, so roughly
20 1,500.
21 **Q. Okay. So out of the 1,500 courts that Tyler**
22 **works with, it sounds like 25 use Auto-Accept?**
23 A. Some of those are actual statewide
24 arrangements, so like the state of Maine, the state of
25 Maryland, the state of Vermont, and those would have

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1 multiple jurisdictions within. So the 25 is customers,
2 but each of those customers would have multiple courts,
3 so it would be a higher number than 25.
4 **Q. How many customers does Tyler have that use**
5 **eFile & Serve?**
6 A. I don't know that -- that number off the top
7 of my head.
8 **Q. Okay. Is it Tyler's position or does Tyler**
9 **encourage courts to have Auto-Accept used for all**
10 **filings?**
11 A. No. Those encouragements or recommendations
12 are not -- are not there. We -- we provide the
13 information to the courts and then we help them
14 configure it based upon their needs.
15 **Q. And you also rely on -- on, I'm assuming, the**
16 **courts to determine whether the courts believe**
17 **Auto-Accept would be appropriate and practical in their**
18 **various jurisdictions?**
19 A. Absolutely, yes.
20 MS. DUKE: Molly, do you mind going to
21 Page 5 of the PowerPoint?
22 **Q. (By Ms. Duke) All right. We're on Page 5 there**
23 **of the PowerPoint that you've gone through.**
24 **Auto-Accept means there's no clerk performing**
25 **a function to have the document transferred from**

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1 **File & Serve to the court's case management system;**
2 **correct?**
3 A. Yes, that's correct.
4 **Q. When I look at this little box or this little**
5 **diagram, I think it helps me. You can see that there's**
6 **a little round thing right on EFM. I'm assuming that's**
7 **kind of the World Wide Web?**
8 A. It is.
9 **Q. So -- and when you look at the World Wide Web**
10 **there in EFM, and then you look to the left of it on**
11 **your screen, or the right of it on the document, so all**
12 **the little -- it says filer, EFSP, filer, EFSP, and then**
13 **it's got conditional criteria, it's got a little person**
14 **above, that's all on the Tyler side of File & Serve;**
15 **correct?**
16 A. Yeah. So everything that you see from the EFM
17 to the left --
18 **Q. Mm-hmm.**
19 A. -- would all be activities that would be
20 performed within Tyler-maintained infrastructure and
21 solutions. The -- the -- in Idaho's example here, the
22 CMS on the right would be managed and owned by Idaho.
23 **Q. Right. And so if I were to use this for Idaho**
24 **even though it was developed for Texas, I'd be able to**
25 **explain to our federal judge that that little arrow**

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1 **taking it from the World Wide Web to CMS, that is the**
2 **transfer from Tyler File & Serve to the court's hosted**
3 **case management system?**
4 A. Yes, that's correct.
5 **Q. Now, a little confusing and -- and maybe**
6 **confusing to some that haven't been obsessed with this**
7 **case as Mr. Fetterly, Ms. Keating, myself, and**
8 **Ms. Mitchell have been, they both are called Odyssey in**
9 **a way, but that feels like a bit of a confusing factor.**
10 **So I understand that there's Odyssey**
11 **File & Serve; right?**
12 A. Yeah. We -- we've changed the name to
13 eFile & Serve, but -- but, yes, it's formerly known as
14 Odyssey File & Serve, correct.
15 **Q. Right. It used to be known as Odyssey**
16 **File & Serve, but it's now known as eFile & Serve, so**
17 **that would be the right way to refer to it; correct?**
18 A. Yes, it would.
19 **Q. All right. And then going over to the case**
20 **management side, that's known as Odyssey case management**
21 **services?**
22 A. It's -- it's now known as our Enterprise
23 Justice Case Management System, but it was formerly
24 known as Odyssey Case Management System.
25 **Q. Just because they shared the same name of**

8 (Pages 138 to 141)

1 **Odyssey prior to these transitions you've talked about,**
2 **that does not mean that they were the same applications;**
3 **correct?**

4 A. That's correct. The term Odyssey is -- was --
5 was relating to the suite of our products, and the case
6 management system was one of those products within that
7 suite, as was the File & Serve product.

8 **Q. So a court could have the Odyssey Case**
9 **Management System but not the Odyssey File & Serve**
10 **portion; is that correct?**

11 A. Yes, that's correct.

12 **Q. Or vice versa?**

13 A. Yes, that's correct too.

14 **Q. And implying to our federal court that because**
15 **they were called Odyssey way back when or back when,**
16 **whenever that is, whether it's File & Serve or whether**
17 **it's case management system, they truly are, in fact,**
18 **two separate applications that just happen to be under**
19 **the Odyssey suite of potential products?**

20 A. Yes. Right. They're two distinct systems,
21 two distinct offerings, but that are integrated with
22 each other.

23 **Q. All right. If you look at No. 2 there, it**
24 **says: "If the envelope details do not meet the**
25 **auto-review condition(s), the envelope is routed to the**

1 **to get that -- that envelope correct; right?**

2 A. Correct. It's the filer's responsibility to
3 enter in those details prior to submission.

4 **Q. That's not the court's responsibility?**

5 A. Correct.

6 **Q. So even under Auto-Accept, if Auto-Accept were**
7 **configured in the State of Idaho, it would be up to the**
8 **filers to get their envelopes right if the document was**
9 **going to go through the auto-review process into the**
10 **case management system?**

11 A. There's actually two components here. There's
12 the configuration which would be driven by the court as
13 to which criteria is deemed appropriate for the
14 Auto-Accept function to kick in, and then -- and then
15 the second component would be the submission of that
16 envelope and whether or not the criteria within that
17 specific envelope met those conditions which would be
18 the responsibility of the filer.

19 **Q. All right. So the court could set the**
20 **criteria. I know we've talked about that. But once**
21 **that criteria is set, it's then up to the submitter as**
22 **to whether Auto-Accept is going to, you know, auto-file**
23 **that document; correct?**

24 A. Yes. I don't know if the filer would have
25 visibility into what those conditions were, but they are

1 **appropriate review queue to be reviewed by a clerk as it**
2 **is today."**

3 **Please help me understand what that is. Give**
4 **me an example of what's being referenced there.**

5 A. Yeah. It's just saying that if the envelope
6 doesn't meet the conditions that were configured under
7 the Auto-accept -- or auto -- yeah, Auto-Accept Review
8 function, then it would flow through its normal
9 workflow, which would be to route it to the review queue
10 for the clerk to be able to review when they had the
11 time or deemed it appropriate.

12 **Q. And who is in control of providing the**
13 **appropriate envelope details?**

14 A. For the details for that specific envelope, it
15 would be the filer.

16 **Q. That would not be something that would be**
17 **within the court's control; correct?**

18 A. That's correct. Every -- every envelope is
19 created and submitted by the filer. The only exception
20 or edit I would say to that is if the court was actually
21 the filer in that scenario. Most of the time, that's
22 not the case.

23 **Q. And if I stick to the world of complaints,**
24 **which is what this case involves, if a complaint were**
25 **submitted through an envelope, it's up to the submitter**

1 the responsible party for filling out the envelope
2 details.

3 **Q. "They" being the filer?**

4 A. Yes, that's correct.

5 **Q. And what Number 2 means there is if the filer**
6 **doesn't fill it out correctly, then it's -- it's going**
7 **to get routed to a queue for the clerk to then review?**

8 A. Yes, that's correct.

9 **Q. Now, Number 3, it says: "If the envelope**
10 **details meets the auto-review conditions, the filings**
11 **are automatically accepted, stamped, funds captured, and**
12 **notifications sent to filers/service recipients."**

13 **Do you see that?**

14 A. I do.

15 **Q. That's if the filer filled out the envelope**
16 **correctly?**

17 A. It's if the filer's envelope details met the
18 conditions that are being evaluated for the Auto-Accept.
19 They can still fill it out correctly and submit it and
20 it get routed to a clerk for review if it didn't meet
21 those conditions.

22 **Q. Now, there were some questions asked to you as**
23 **to whether file stamps were configurable by location.**
24 **Do you recall that?**

25 A. I do.

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1 Q. And so it's my understanding the only file
2 stamp that comes on to the document is once the document
3 has been accepted, it's then -- it's then stamped
4 accepted; is that correct?

5 A. Yeah, that's correct. The file stamp is --
6 I'm going to call it, for lack of a better term, "burned
7 in." Back in the old days, it was the (indicating),
8 right?

9 Q. Yeah.

10 A. But it's -- that action actually takes effect
11 when the acceptance process occurs.

12 Q. And it does not -- that action of the file
13 stamp does not take effect while the complaint is in the
14 clerk's queue to review for acceptance; correct?

15 A. Yeah, that's correct.

16 Q. It is only in the clerk setting -- without an
17 Auto-Accept, it's only when the clerk has accepted that
18 document that a file stamp is placed on it; is that
19 correct?

20 A. It -- the file stamp can be placed on it at
21 the time of acceptance regardless of whether a clerk
22 accepts it or the auto-acceptance functionality kicks
23 in.

24 Q. Sure. I was just trying to break those out,
25 so take Auto-Accept out of it.

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1 A. Okay.

2 Q. If I'm in a situation where I don't use
3 Auto-Accept and it's clerk review, the -- the file stamp
4 is only placed on the document after the clerk performs
5 their review and accepts the document into the case
6 management system?

7 A. Yes, that is correct.

8 MS. DUKE: All right. Let's go to the
9 next page, Molly.

10 Q. (By Ms. Duke) If we look at Page 6 of this
11 PowerPoint, this all talks about that first one with the
12 little -- little clock icon, "improves average response
13 time." This is focused on clerks; correct?

14 A. Yes, it is.

15 Q. This is not focused in on the time or impact
16 of Auto-Accept to judges; correct?

17 A. I'm not sure I understand your question.
18 Auto-Accept to judges, you mean documents like proposed
19 orders?

20 Q. No, I -- I should say it this way. So let's
21 assume it's a complaint still.

22 A. Right.

23 Q. And let's assume that complaint goes through
24 Auto-Accept with a one-cent filing fee and is then into
25 the court system. This improves average response time,

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1 that doesn't have anything to do with the time now that
2 it'll take a judge to deal with an improper filing fee;
3 correct?

4 A. Correct. It does not take that into
5 consideration.

6 Q. And it also talks about low-priority filings
7 and then -- and then assuming clerks will be focusing on
8 more complex high-priority filings. Explain to me what
9 Tyler, in this PowerPoint, means by a low-priority
10 filing.

11 A. Yeah. It could mean a range of -- of things.
12 Certain jurisdictions will deem certain filings less
13 time-sensitive and others more time-sensitive. I'll
14 give an example of a time-sensitive matter. An
15 emergency protection order is an emergency protection
16 order, and that's generally deemed as a more highly
17 valued or time-sensitive matter. And an original --
18 just a motion on a case that's not subject to the
19 statute of limitations is probably a lower priority.
20 I'm assuming that the author meant that when -- when
21 creating this document.

22 Q. Do you know if the author was in any way
23 factoring in complaints as to the benefits of
24 Auto-Accept when the author generated this document?

25 A. I can't speculate on -- on that.

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1 Q. And do you know whether or not the author was
2 considering low-priority complaints versus high-priority
3 complaints in the state of Idaho when generating this
4 document?

5 A. I can't speculate on that.

6 Q. It then goes to reduce return for correction
7 rates, and it says: "Many courts effectiveness are
8 measured by the percentage of accepted filings.
9 auto-accepted -- auto-acceptance improves these
10 metrics."

11 Do you know whether Idaho's Courts
12 effectiveness are measured by the percentage of accepted
13 filings?

14 A. I do not.

15 Q. Do you know who sets these types of -- of
16 measures to determine how effective a court is?

17 A. I think it -- it varies by court, by
18 jurisdiction.

19 Q. Any idea what Idaho uses to determine whether
20 its courts are effective?

21 A. No, I do not.

22 Q. When it says it "reduces return for correction
23 rates," that's -- that's because it's auto-accepted,
24 meaning nothing's returned for correction; correct?

25 A. Yes, that's correct.

10 (Pages 146 to 149)

1 **Q. Even if something gets through and should be**
2 **corrected, that's not going to get caught in this**
3 **auto-acceptance part of this. Instead, it's going to be**
4 **dealt with the court clerks now on the case management**
5 **side; correct?**
6 A. That's correct. The measurement here is from
7 the time of submission to the time of clerk action or --
8 or action on the envelope.
9 **Q. And, again, this -- this middle column has**
10 **nothing to do with the impact on judges in the event**
11 **corrections need to occur to something that's been**
12 **auto-accepted into the case management system.**
13 A. Yes.
14 **Q. Correct?**
15 A. That's correct, mm-hmm.
16 **Q. Now, the third bullet is -- it says "reduces**
17 **operational overhead." I'm assuming that's just because**
18 **it takes the clerk out of the picture when**
19 **auto-acceptance is used.**
20 A. Yeah, I assume that's a valid assumption.
21 **Q. But it's not talking about the impact on**
22 **clerks or court staff or judges in the event something**
23 **has been auto-accepted and transferred into the court's**
24 **case management system; correct?**
25 A. Correct. I don't think it takes that into

1 consideration.
2 **Q. And the data for all three of these columns,**
3 **I'm assuming, is -- is Texas data. Do you know exactly**
4 **what data was used to even come up with these three**
5 **columns?**
6 A. I -- I can't say for sure, but the document
7 was created for Texas, so it's a reasonable assumption.
8 **Q. Any idea how many filings were looked at?**
9 A. No, I don't.
10 **Q. Any idea how many courts were looked at?**
11 A. No, I don't.
12 **Q. Any idea of the volume at all of what was**
13 **looked at to come up with this PowerPoint?**
14 A. No, I can tell you that Texas has 254
15 counties, multiple offices in each, and handles anywhere
16 from 45- to 65,000 filings a day. But beyond that, I'm
17 not sure what was used to reference or create this
18 document.
19 **Q. But it's also my understanding that Tyler**
20 **doesn't cover all of Texas; is that correct?**
21 A. No, we do.
22 **Q. Oh, you do? Okay.**
23 A. We -- our e-filing program is the e-filing
24 program for the State of Texas.
25 **Q. Let me just look at something real quick that**

1 I talked to Mr. Girdner about yesterday.
2 **So Mr. Girdner testified yesterday as to --**
3 **and maybe this was just related to a press review queue,**
4 **is the only court that's on press review queue in Texas,**
5 **Austin?**
6 A. It's -- it's Travis County, but it is Austin,
7 Texas. We just gotta be careful because Austin is a
8 county that is not Austin, Texas.
9 **Q. Okay. Leave it to the Texans to do that. No**
10 **offense. I know you're there, but...**
11 **All right. So Travis County, out of all of**
12 **those courts you were just talking about in Texas,**
13 **Travis County's the only one who has a press review**
14 **queue through Tyler; is that correct?**
15 A. That is correct.
16 MS. DUKE: Okay. All right. Let's go to
17 the next page, Molly, Page 7.
18 **Q. (By Ms. Duke) So I'm still a tiny bit confused**
19 **as to what these charts mean, so let me just ask you a**
20 **few questions about there.**
21 **Do you see the little stars down below? The**
22 **one that says, first star: "Example data utilizing Q4**
23 **2019 review -- reviewer metrics"?**
24 A. I do see that.
25 **Q. Any idea whose Q4 2019 reviewer metrics?**

1 A. I would assume Courts A, B, C, D, and E.
2 **Q. But any idea who Court A is?**
3 A. I don't know.
4 **Q. What Court B is?**
5 A. I don't know. We'd have to ask the author.
6 I'm not sure.
7 **Q. Or Court C, D, or E?**
8 A. No, I -- I don't know.
9 **Q. So then it says, "AR," so that's two little**
10 **stars, and it says that means auto-review.**
11 **So we have Court A and Court B that don't use**
12 **auto-review; right?**
13 A. That's how I interpret it, yes.
14 **Q. And does auto-review mean Auto-Accept or do**
15 **you know?**
16 A. I believe auto-review and Auto-Accept are
17 synonymous here.
18 **Q. So then Courts C, D, and E use auto-review?**
19 A. That's how I interpret it, correct.
20 **Q. And then it says the AR percentage is based on**
21 **number of reviewable filings submitted versus number of**
22 **filings auto-reviewed. And so I guess let's look at**
23 **those.**
24 **So if I were to compare Court A to Court C,**
25 **what is -- what is this chart telling me?**

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1 A. My interpretation of the chart says that
2 Court A is not using auto review where Court C has
3 5 percent of their envelopes being auto-reviewed.
4 **Q. And does it -- is it also comparing, then, the**
5 **efficiency of Court A to Court C or not?**
6 A. I think that's a subjective term. I -- I
7 think it is telling you the percent response under 24
8 hours and the acceptance percentage.
9 **Q. And these are all fewer than 24 hours, not**
10 **broken out by the minute or hour; correct?**
11 A. Correct.
12 **Q. And so this data here on this page doesn't**
13 **break it down specifically into if a court's not using**
14 **Auto-Accept, but is processing complaints within, let's**
15 **say, three hours, how is that reflected here in this**
16 **data?**
17 A. I don't think that it is.
18 **Q. Okay. All right. Let's go to Page 8.**
19 **With respect to Page 8, again, you were --**
20 **talked about a number of -- of categories. We've**
21 **already addressed that.**
22 **But in providing Page 8, no evaluation has**
23 **been done as to what the cost on Idaho's side would be**
24 **to implement or use an Auto-Accept in any capacity; is**
25 **that correct?**

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1 A. Yes, that's correct.
2 (Pause in the proceedings.)
3 **Q. (By Ms. Duke) Under Auto-Accept, is -- well,**
4 **strike that.**
5 **Have you been a part of any communications**
6 **with Idaho's Courts related to Auto-Accept?**
7 A. No. No, I have not.
8 **Q. Are you aware of whether anyone at Tyler has**
9 **been involved in any conversations?**
10 A. No, I am not.
11 **Q. Do you know if Tyler has provided Idaho's**
12 **Courts with any presentation on Auto-Accept?**
13 A. I'm not aware of that.
14 **Q. And you understand that Tyler's contract**
15 **related to its File & Serve is with the Idaho Supreme**
16 **Court?**
17 A. Yes, I do.
18 **Q. And with respect to case management, Tyler's**
19 **contract is also with the Supreme Court?**
20 A. Yes, I do.
21 **Q. I'm just going through a bunch of questions,**
22 **so bear with me here.**
23 A. Sure.
24 (Pause in the proceedings.)
25 **Q. (By Ms. Duke) Now, in Auto-Accept, even if the**

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1 **court configured a confidentiality setting that should**
2 **be used, assuming confidential information was provided,**
3 **it would be up to the filer to properly click on that**
4 **confidential box; correct?**
5 A. Yes, that is correct.
6 **Q. And so, you know, sadly we know that there are**
7 **malicious, not-nice people out there, so if a malicious**
8 **not-nice person knew something was confidential but**
9 **wanted to go ahead and -- and get it filed, he or she**
10 **could just merely not accept or click the confidential**
11 **box and that document would then be automatically**
12 **transferred to and filed in the court's case management**
13 **system; correct?**
14 A. If the conditions were configured to accept it
15 in that manner and that scenario and transpired, then,
16 yes, it would.
17 **Q. Have any of the courts that have been using**
18 **Auto-Accept talked to you about how they dealt with any**
19 **type of malicious filings?**
20 A. No, they have not.
21 **Q. Have any -- I know that we've seen cases sadly**
22 **here in Idaho, as well as other places, of documents**
23 **placed in the public record, revenge porn, that type of**
24 **stuff. Has Tyler had any communications with any of the**
25 **states who use an Auto-Accept as to things like revenge**

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1 **porn, child porn, anything like that making its way into**
2 **court documents?**
3 A. No, we have not.
4 **Q. Now, with respect to Odyssey File & Serve, all**
5 **documents in the submission are included in the same**
6 **envelope; correct?**
7 A. Yes. For each submission, they -- all filings
8 and documents are included in the same envelope. Yes,
9 that's correct.
10 **Q. That's not the case with Auto-Accept; correct?**
11 A. Correct.
12 **Q. There would actually have to be multiple**
13 **envelopes that would be used per filing?**
14 A. No, I don't think that's the case. My
15 understanding is that the envelope is still intact, but
16 the filings are evaluated independently, so every filing
17 is evaluated within that envelope and then made that
18 determination but the envelope still holds true.
19 **Q. Ah, I see. Okay. So the envelope holds true**
20 **but what happens is it gets transferred into the court's**
21 **case management system and then the clerk has to then**
22 **break out the documents that are within the envelope?**
23 A. I'm not certain how an envelope containing
24 multiple filings when it's assessed with the auto-review
25 rules where one meets that criteria and the others

12 (Pages 154 to 157)

1 don't, exactly what transpires if it sends that record
2 immediately or if it holds it until all actions have
3 been taken on that envelope before transferring it to
4 the CMS.
5 **Q. And so you're not sure what the clerks need to**
6 **do from a work standpoint once an envelope with multiple**
7 **documents is transferred into the case management**
8 **system; is that fair?**
9 A. That's fair, yes.
10 **Q. Once a document is in the case management**
11 **system, the clerks then need to go through the case**
12 **management system to interact with -- with the various**
13 **parties to the case; correct?**
14 A. Yeah, that's a typical scenario.
15 **Q. Give me one second here.**
16 A. Of course.
17 (Pause in the proceedings.)
18 **Q. (By Ms. Duke) So let me ask you a question in**
19 **the context of a complaint. If -- so in Idaho, I'll**
20 **represent to you that when a case is initiated with a**
21 **complaint, a complaint, a case information sheet, and a**
22 **summons are all required as part of that filing.**
23 I'm assuming that those would all be in the
24 same envelope?
25 A. Yeah, more than likely in an initial filing.

1 That's correct.
2 **Q. And if, for instance, the filing fee wasn't**
3 **the proper amount, but was some sort of filing fee, so**
4 **that it was taken and transferred to the court and**
5 **auto-accepted, on filing, that means the summons, the**
6 **case information sheet, and the complaint would all be**
7 **filed even though the proper filing fee has not been**
8 **paid?**
9 A. Yes, that's correct.
10 **Q. And if someone were supposed to mark something**
11 **confidential and didn't, the only way that could be**
12 **addressed under an Auto-Accept situation would be for**
13 **then, in the case management system, however the court's**
14 **handled, you know, dealing with documents that are in**
15 **the case management system and correcting their filing,**
16 **that would have to be done on the case management end;**
17 **correct?**
18 A. Yes, that is correct. That would be the
19 appropriate means to correct the -- that security
20 setting.
21 **Q. If, in that context of the complaint, so,**
22 **again, I mentioned there's a complaint, a case**
23 **information sheet, and a summons, they're in the same**
24 **envelope, if -- if they're being submitted and no filing**
25 **fee is paid, are the summons and case information sheets**

1 **filed and the complaint not filed under Auto-Accept or**
2 **are all three not accepted?**
3 A. It depends on how it's configured. It would
4 have to hit those criteria, and then depending upon
5 that, it would react accordingly.
6 **Q. Perfect. So I'm going to transfer, I think,**
7 **now into press review queue, so why don't we take five**
8 **minutes and then I'll get through that portion?**
9 A. Okay. Sounds good.
10 **Q. Okay.**
11 (A break was taken from
12 2:36 p.m. to 2:43 p.m.)
13 MS. DUKE: All right. We're back on the
14 record.
15 Molly, do you mind pulling up Exhibit 34?
16 **Q. (By Ms. Duke) All right. Do you see Exhibit 34**
17 **there? Do you recall discussing this with Mr. Fetterly?**
18 A. Yes, I do.
19 **Q. This is a Tyler-generated document; correct?**
20 A. Yes, it is.
21 **Q. And the Idaho Courts did not have anything to**
22 **do with the content in Exhibit 34; is that correct?**
23 A. That's correct.
24 **Q. Okay. And we had little, you know,**
25 **screenshots of that being able to show how it came from**

1 **the website as 34A and B. Again, that would all be**
2 **Tyler-generated language, not Idaho Court language;**
3 **correct?**
4 A. Yes, that's correct.
5 MS. DUKE: All right. Let's go ahead and
6 turn to Exhibit 35, Molly.
7 **Q. (By Ms. Duke) This is the e-filing overview.**
8 **It's a very large document; correct?**
9 A. Yeah. Mine shows 248 pages.
10 **Q. And this is a Tyler-drafted document?**
11 A. Yes, it is.
12 **Q. Not one that is drafted or has input from the**
13 **Idaho Courts; is that correct?**
14 A. That is correct.
15 **Q. So when I turn to that page that we're on of**
16 **Exhibit 35.**
17 MS. DUKE: Let's go to Page 17, please.
18 There it is.
19 **Q. (By Ms. Duke) Okay. Can you see that okay?**
20 A. Yes, I can.
21 **Q. All right. This diagram that is on Page 17 of**
22 **Exhibit 35, Tyler's individual filer user guide, this is**
23 **not based on Idaho; is that correct?**
24 A. That is correct. It is not.
25 **Q. And this Exhibit 35 is for File & Serve;**

1 right?
2 A. It is. Yes, correct.
3 **Q. It is not for the case management system used**
4 **by the court?**
5 A. That is correct.
6 **Q. Now, when I look at this chart, it says "filer**
7 **submits." Do you see that?**
8 A. Yes, I do see it.
9 **Q. And then it goes to the court and it has a**
10 **little picture of the court.**
11 A. Yes, I see that.
12 **Q. That's not meant to represent the court's case**
13 **management system; correct?**
14 A. Correct. That -- that's not the workflow that
15 takes place.
16 **Q. What that really is meant to reflect is when**
17 **it says "court receives," that means Tyler File & Serve**
18 **receives that submission.**
19 A. Correct. I believe it -- it means that the
20 eFiling Manager received that submission and the clerk
21 now has access to review it.
22 **Q. All right. And then we've got a clerk that**
23 **looks like a judge as the next little icon; right?**
24 A. Yeah, I was noticing that as well.
25 **Q. And -- and so that would be the filer**

1 submitting it to eFile & Serve, which means it's going
2 into the eFile Manager portion of eFile & Serve and
3 the clerk now has it for review; correct?
4 A. That is correct.
5 **Q. It then says, "Clerk reviews and notifies**
6 **filer of status via email," and is that when we get into**
7 **that whole whether it's accepted or rejected?**
8 A. It is. And the clerk doesn't actually notify
9 the filer. That's an automated process that takes --
10 takes place based upon the filer's notification settings
11 or configurations.
12 **Q. So when the clerk reviews and notifies the**
13 **filer of status, what that really means is the clerk is**
14 **either accepting or rejecting and the filer is getting**
15 **auto-noticed as to what's happened.**
16 A. Yes, that's correct.
17 **Q. And in that little multi-second process,**
18 **obviously, the filer's getting an email. And then when**
19 **I look at the computer screen there, that's actually now**
20 **going to be my case -- court case management document --**
21 **that's going to now be my court case management**
22 **database; correct?**
23 A. Well, I -- it -- it's difficult to say by this
24 graphic. Once the acceptance process takes place, it
25 would be -- the document and the information would be

1 delivered to the case management system. Obviously, the
2 filer can't view that information. They don't have
3 access to the court's case management system. They
4 could view it in the e-filing system or in whatever
5 online court record repository that the State of Idaho
6 provides any -- any general public or legal professional
7 or SRL to access those records.
8 **Q. I see.**
9 **Okay. So what we really could add to this**
10 **diagram -- first, I think we'd agree this is probably**
11 **not the best diagram --**
12 A. Yes.
13 **Q. -- to properly represent the -- Idaho's**
14 **eFile & Serve and how a document gets to the case**
15 **management system; is that correct?**
16 A. Yeah, I think that's a valid statement.
17 **Q. All right. Because what we would need to add**
18 **there is after the filer receives email, probably at**
19 **that same time when the filer receives the email we**
20 **could actually put a picture of the courthouse then**
21 **because that's actually when it would go into the case**
22 **management system if accepted?**
23 A. Yes. That's -- that would be a more accurate
24 reflection of reality.
25 **Q. And if rejected, it doesn't go into the**

1 court's case management system, it goes back to the
2 filer to correct whatever issues need to be corrected?
3 A. That's -- that's correct.
4 **Q. Do you know what time frame or grace period**
5 **Idaho provides to its filers in the event there's an**
6 **error that needs to be corrected?**
7 A. No, I do not.
8 **Q. Are you aware that there are various courts in**
9 **the country that do provide a grace period --**
10 A. Yes, I am.
11 **Q. -- for filers to correct their submission?**
12 A. Yes, I am.
13 **Q. And then that there are some who do not**
14 **provide grace periods and put the burden on the filers**
15 **to either gets it right the first time or not?**
16 A. Yes, I'm also aware of that.
17 MS. DUKE: All right. Let's go to the
18 next page, Molly.
19 **Q. (By Ms. Duke) Just a few questions on the**
20 **filing queue status. Again, there's -- there's a very**
21 **big debate between CNS and the Idaho Courts as to what**
22 **"filing" means.**
23 **I'm assuming any time you've used the word**
24 **"filing" or these documents are using the word "filing,"**
25 **I'm assuming Tyler is not weighing in on what is or what**

1 **is not a -- an official filing; is that fair?**
2 A. Yeah, that is correct. A filing is a very
3 broad term that's used to describe a lot of things.
4 Very similar to the word "docket," how it can describe
5 multiple things in the court system, filing can also do
6 that.
7 **Q. When we look at submitted, it says there that**
8 **document file format and payment information have been**
9 **verified and accepted. That does not mean that the**
10 **money has been transferred to the court yet; correct?**
11 A. That's correct.
12 **Q. That doesn't occur until further down this**
13 **chart where it says "accepted"; correct?**
14 A. That is correct.
15 **Q. And by the file format and payment information**
16 **have been verified and corrected, what's the "verified"**
17 **mean in that submitted row?**
18 A. Say that one more time?
19 **Q. Well, it says --**
20 A. Verified and corrected?
21 **Q. Yeah. It says: "The document file format and**
22 **payment information have been verified and accepted."**
23 **What's being referred to there as verified?**
24 A. Sorry. I thought you said verified and
25 corrected.

1 Verified and accepted. The document file
2 format, meaning it's the correct filing type of
3 document. Most courts require a PDF document, so it's
4 validating that. And then the payment comment is
5 reflecting the pre-authorization that we do to protect
6 against non-sufficient funds.
7 **Q. That submitted row doesn't have anything to do**
8 **with verification that the filing has been verified as a**
9 **proper and accepted filing; correct?**
10 A. That's correct.
11 **Q. Okay.**
12 A. That's done by the clerk.
13 **Q. And that's done there at the accepted or**
14 **rejected stage; correct?**
15 A. Yeah. They make that determination while the
16 status is under review. And then once that
17 determination is made, it either goes into the accepted
18 or rejected status.
19 **Q. All right. And to the extent there is a case**
20 **management manual like this e-filing manual, that's a**
21 **Tyler-documented case management document; correct?**
22 A. I'm not referring -- I'm not familiar with
23 what you're referring to.
24 **Q. Well, does Tyler have a case management**
25 **document like this Exhibit 35 we were just looking at?**

1 A. Yes, we do.
2 **Q. Okay. Oh, I see. So there's an individual**
3 **file user guide for File & Serve, that's Exhibit 35.**
4 **And then, apparently, there's also a firm administration**
5 **or administrator user guide for File & Serve.**
6 A. That's correct.
7 **Q. What -- what are each going to?**
8 A. The filer is referring to an individual filer
9 who has the individual filer role. And the firm
10 administrator is referring to an individual who has the
11 firm administrator role. The firm administrator is
12 someone who may be responsible for setting up a -- a law
13 firm or an entity and help manages that for that firm.
14 **Q. Okay. Let me show you Exhibit 37 real quick.**
15 **(Pause in the proceedings.)**
16 **Q. (By Ms. Duke) This document here, tell me, is**
17 **this the File & Serve -- the first page is the**
18 **File & Serve for Idaho's Courts?**
19 A. I'm not familiar with that specific page.
20 **Q. Okay. How about the second page?**
21 A. Yeah. The second page is our electronic
22 filing service provider.
23 **Q. All right. And that's the Odyssey**
24 **File & Serve as it's called or used to be called?**
25 A. Yes, that's correct.

1 MS. DUKE: All right. Let's jump to --
2 Molly, why don't you bring up -- why don't you bring the
3 PowerPoint back up, actually?
4 **Q. (By Ms. Duke) So let's turn to press review**
5 **queue.**
6 A. Okay.
7 **Q. We're going to go back to that PowerPoint.**
8 **All right. If we turn to the second page of**
9 **that, that's the press review. Now, are you aware of**
10 **whether the State of Idaho has any definition for what**
11 **"the press" means?**
12 A. No. I -- I'm not sure Idaho's definition of
13 press, no.
14 **Q. Does Tyler also provide public review queues?**
15 A. No. Tyler's only review queues that we
16 provide are the clerk review queue and then the
17 additional tool that we provide is labeled the Press
18 Review Tool. The audience is really -- of that tool,
19 is -- is dependent upon our contract holders, and in
20 this case, it would be the Supreme Court or the Court.
21 **Q. So if press review queue were to be used in**
22 **the state of Idaho, it'd be up to the State of Idaho to**
23 **determine who would be credentialed to use the press**
24 **review queue?**
25 A. Yes, that is correct.

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1 **Q. Is there a separate credentialing system**
2 **that's used for each person or is it an entity or how's**
3 **that used? Do you know?**
4 A. Yeah. We use our Tyler Identity Management
5 system, and it -- it is a user ID and a password that
6 grants that access, and so we ask for that information
7 going into providing those authorized users with access.
8 **Q. Okay. And so when you say that, if Idaho were**
9 **to use the press review queue tool, would Idaho then**
10 **need to provide Tyler with the identity of anyone that**
11 **would have a user ID and password?**
12 A. Yeah. You would generally provide us with
13 that user ID and we would then set up that user with
14 access to the system. The normal process that we've
15 seen take place is the court would then create a user
16 inside of the File & Serve platform and then provide us
17 with that user ID and then we grant that access.
18 **Q. And is it multiple user IDs for states that**
19 **are using -- or courts that are using press review**
20 **queue?**
21 A. It can be. It's up to the -- it's up to our
22 contract holders as to how many they provide.
23 **Q. Is there any type of auditing or anything like**
24 **that that's done as to a specific user's access to a**
25 **document in the press review queue?**

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1 A. No, not to a specific document. There is no
2 audit trail. We don't possess one.
3 **Q. Is there any ability to watermark documents as**
4 **under review or not filed in the press review queue?**
5 A. No, there is not.
6 **Q. Now, a press review queue, under Page 9 of**
7 **this document we have here, the -- the PowerPoint we've**
8 **been referring to, which is SO Page 9, that requires**
9 **an -- or an amendment to any contract; correct?**
10 A. Yes, that is correct.
11 **Q. So if the State of Idaho were to look to have**
12 **the Press Review Tool, it would need to negotiate a**
13 **contract amendment with Tyler?**
14 A. Yes, that is correct.
15 **Q. And it's my understanding that the fee that --**
16 **that the Supreme Court has been told Idaho will be**
17 **charged each year is \$108,000 for the subscription to**
18 **the Tyler press review queue; is that correct?**
19 A. That is correct. 108,000 for the -- the
20 subscription to the Press Review Tool solution, correct.
21 **Q. Now, yesterday, Mr. Girdner who is the head of**
22 **CNS suggested that that was only a starting point for**
23 **Tyler and that that amount could be negotiated.**
24 **Does Tyler offer the press review subscription**
25 **for less than \$108,000 for a court who wants to use the**

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1 **press review queue?**
2 A. We have offered that at a lower rate in the
3 past.
4 **Q. And how low has that rate gone?**
5 A. \$60,000 is -- is the -- the lowest rate, and
6 the -- the intent behind that or the reason behind that
7 is that that number was provided before the new pricing
8 came out, and so it was honored for that first one-year
9 term and then it goes up to the normal 108-.
10 **Q. All right. So even when it was negotiated**
11 **down, it might have been provided at a lower rate**
12 **because that had been previously promised but it then**
13 **goes up to the next year to the 108,000?**
14 A. That's correct.
15 **Q. So I understand Mr. Girdner obviously wouldn't**
16 **know what Tyler would or wouldn't do, but I think it's**
17 **fair to say, based upon your testimony, that if the**
18 **State of Idaho, regardless of its bargaining power,**
19 **regardless of its amazing negotiation skills, if it**
20 **wants the press review queue, it's going to pay \$108,000**
21 **a year for that subscription?**
22 A. Yeah, that's an accurate assessment.
23 **Q. Now, I know that it says here that there's**
24 **also updated terms and conditions in addition to the**
25 **contract amendment that would occur. Does Tyler**

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1 **indemnify the courts if someone is harmed by improper**
2 **use of a document that was provided through the press**
3 **review queue?**
4 A. No, we do not.
5 **Q. We were also talking about the -- the ability**
6 **and whether those could be, you know, the documents in**
7 **the press review could be manipulated, and I want to be**
8 **clear on this issue.**
9 **So the Idaho Supreme Court asked Jessi Fisher**
10 **if the documents in the press review queue were the same**
11 **documents in eFile & Serve or whether they were copies**
12 **of the original documents, and she answered that they**
13 **are the same documents. Help me understand what that**
14 **means.**
15 A. Yeah, that's an accurate statement. So if you
16 recall when we were discussing the EFM's responsibility
17 earlier, we were saying that that's where the documents
18 live, that's where they're housed, and that both the
19 review tool for the clerks and the review tool for the
20 press were just applications that could surface or
21 display that information. Both of them can display that
22 document exactly in a similar way, and so that's what
23 she's referring to, is that they're both getting access
24 to that same information at the same location. They're
25 just surfaced in different applications.

16 (Pages 170 to 173)

1 Q. Got it.
2 And so with respect to the original document
3 that is submitted to File & Serve, that original
4 document is displayed both in the clerk queue and the
5 press review queue?
6 A. That is correct.
7 Q. That's correct?
8 A. Yes, it is. Sorry. Yes, that's correct.
9 Q. And so it would be the original document that
10 anyone accessing the press review queue would be looking
11 at?
12 A. That is correct.
13 Q. And I know that you had said there's no way to
14 modify a document that is in the clerk's -- or in a
15 queue, so the clerk's queue, but there is because it
16 ends up being file stamped upon acceptance; right?
17 A. Yes, absolutely. So the clerks have the
18 ability to make edits to the document, right? They have
19 stamping options, annotation options, strike-through
20 options, a series of tools through the application,
21 through the review tool application. Many of those
22 tools are commonly found in editors and, you know, like
23 you would see in Microsoft Word or even a PDF editor.
24 Those same tools do not exist in the Press Review Tool.
25 So if I stated that earlier, it was a -- just I misspoke

1 on my -- on my part.
2 Q. No, I understand. I don't think we had
3 separated it out for you, so I appreciate you being
4 precise on that.
5 Okay. With respect to the press review queue,
6 it -- it says that documents can be made available based
7 on the number of days. Do you recall testifying to
8 that?
9 A. Yes, I do.
10 Q. Does that mean anything not reviewed or
11 accepted within a certain time period could
12 automatically be transferred to the press review queue?
13 A. No, this would be the inverse. If it met the
14 criteria, it would exist in the Press Review Tool until
15 that day, duration elapsed, and then in which case it
16 would no longer meet that criteria.
17 Q. So the press review queue, the time that it's
18 up there, is that defined by the client and in that
19 instance, the courts?
20 A. That's correct.
21 Q. Are you aware of any spiders or scraping or
22 bots, you know, those types of things that have been
23 utilized on Tyler's press review queue?
24 A. Not to my knowledge.
25 Q. Does Tyler have anything in place to protect

1 against bots, spiders, whatever, all these technical
2 terms that my children would know and I don't know them
3 all, but those things that can come in and -- and get
4 into a document or into a system, how does Tyler protect
5 that press review queue?
6 A. We -- we don't on the Press Review Tool.
7 Specifically, on the Press Review Tool, we do not.
8 Q. And given that you don't have those
9 protections on the press review queue, what does that
10 mean with respect to the ability to, you know, have
11 spiders or scrapers or bots or whatever accessing the
12 press review queue?
13 A. There is -- there's an implied assumption that
14 they -- the bots would have access to the environment
15 through the user credentials. If that assumption is
16 true, then they would be able to procure screenshots or
17 captures of that document.
18 Q. Now, is the clerk's queue protected?
19 A. The clerk's review tool?
20 Q. Correct.
21 A. I don't know.
22 Q. But the only people accessing the clerk's
23 review tool are the clerks that have been provided
24 authorization through the court system; correct?
25 A. Yes, that is correct.

1 Q. With respect to the press review queue, if it
2 were open to the press, whomever would be determined to
3 be the press in the state of Idaho, would presumptively
4 then receive a user ID and ability to access the press
5 review queue; correct?
6 A. Yes, that is correct.
7 Q. So the big difference between those two is the
8 clerks review queue has a very limited number of people
9 who are employed by the courts to do their job; right?
10 A. Yes. It's whoever the court grants access to
11 the clerk review tool.
12 Q. And then the press review queue obviously
13 would be -- we're all presuming those would be
14 non-employed folks that would have access to the press
15 review queue?
16 A. I think that's up to the court's discretion as
17 to who that audience is.
18 Q. Okay. Have any of the courts that you --
19 you're working with had access to the public to the
20 press review queue?
21 A. I don't know.
22 Q. You also mentioned, it sounds like, the press
23 review queue could be limited to only being available on
24 certain kiosks at courthouses; is that correct?
25 A. Yes, that's correct. We have a few customers

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1 who have attempted to do that.
2 **Q. All right. And who are those customers?**
3 A. I'm -- I'm not sure which ones they are off
4 the top of my head.
5 **Q. And has -- has that worked with them in their**
6 **ability to manage their press review queues or do you**
7 **know why they were doing that?**
8 A. Yeah. My understanding was that they were
9 doing that to -- to further protect the access and who
10 was getting access to that Press Review Tool and making
11 it available in the court clerk's office gave them that
12 additional oversight.
13 **Q. Do you have any knowledge of whether CNS or**
14 **any other entity has attempted to, you know, scrape, use**
15 **spiders, anything like that on the Press Review Tool?**
16 A. I don't.
17 **Q. Do you know how the Press Review Tool is**
18 **secured against the top ten OWASP attacks?**
19 A. No. That's a third-party security set of
20 requirements, and it would -- it would take us some time
21 and resources to evaluate and assess the Press Review
22 Tool against those. We haven't conducted that exercise.
23 **Q. Do you know if the press review queue has ever**
24 **been attacked, hacked, or compromised at any time?**
25 A. No, I'm unaware of any of those situations.

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1 **Q. And I'm assuming you would be aware of those**
2 **as the 30(b)(6) representative here today?**
3 A. Correct.
4 **Q. Does Tyler permit its clients to run its own**
5 **web application firewall to protect the Press Review**
6 **Tool website?**
7 A. Yeah. I don't -- yeah. We would, yes.
8 **Q. Now, have you been involved in any of the**
9 **conversations with Jennifer Dvorak as to information**
10 **she's requested from Tyler related to the press review**
11 **queue and its security parameters?**
12 A. Not directly.
13 **Q. It's my understanding she's asked a number of**
14 **questions that have been new to -- new to Tyler with**
15 **respect to clients asking security questions. Is that a**
16 **fair representation?**
17 A. My understanding is that some of her questions
18 are pretty detailed and require a higher level of -- of
19 security knowledge to evaluate and assess and provide
20 responses, yes.
21 **Q. And do you know if Tyler is FedRAMP or**
22 **StateRAMP authorized?**
23 A. Not -- not with regards to the Press Review
24 Tool.
25 **Q. Okay. What tools is it FedRAMP or**

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1 **StateRAMP -- and, actually, I don't need to know them**
2 **all.**
3 **Is it FedRAMP or StateRAMP authorized with**
4 **respect to File & Serve?**
5 A. No.
6 **Q. Is it FedRAMP or StateRAMP authorized with**
7 **respect to its case management system?**
8 A. No, we are not.
9 **Q. Has Tyler attempted to obtain the FedRAMP or**
10 **StateRAMP authorization?**
11 A. Not within the courts and justice division.
12 **Q. Where does Tyler have FedRAMP or StateRAMP**
13 **authorization?**
14 A. Within our federal division.
15 **Q. Okay. And that's PACER; correct?**
16 A. No, PACER's not a Tyler product.
17 **Q. Okay. Do you know if PACER is FedRAMP**
18 **certified?**
19 A. I do not know if they are or not.
20 **Q. Do you know if any of your competitors, such**
21 **as Granicus or Tybera, are FedRAMP or StateRAMP**
22 **certified?**
23 A. I -- I do not.
24 **Q. Are you aware of the Idaho Supreme Court terms**
25 **and conditions for cloud-based services that it's**

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1 **requiring with any contract amendments?**
2 A. Yeah. I've seen something along those lines
3 come through. I think that's one of the exhibits, if
4 I'm not mistaken. Is that the document that you're
5 referring to?
6 **Q. Correct. It's Exhibit 2 to your request that**
7 **we provided to you. Have you had a chance to take a**
8 **look at that?**
9 A. Yes.
10 **Q. Prior to today?**
11 A. Mm-hmm.
12 **Q. Do you know whether Tyler would be willing to**
13 **agree to these terms and conditions that are Exhibit 2**
14 **to the 30(b)(6) today?**
15 A. No. The -- in evaluating this and assessing
16 it, just going through and trying to determine the
17 applicability of -- of each of these would -- would take
18 a significant number of resources on Tyler as well as a
19 significant amount of time, and that isn't something
20 that we're prepared to do at this time.
21 **Q. Under Tyler's current contract with the courts**
22 **for its case management system and for its File & Serve,**
23 **is Tyler under any obligation to go through this**
24 **evaluation with respect to these terms and conditions**
25 **such as what you just discussed or -- or is that not**

18 (Pages 178 to 181)

1 **done until either an amendment or a renewal of a**
2 **contract?**
3 A. My understanding, and I'd have to look at the
4 contract in order to validate that, would be that it
5 would be upon either an amendment to that contract or a
6 new contract being -- being created between the two
7 parties.
8 **Q. So pretty fair to assume if Sara Omundson or**
9 **someone in her office requested that Tyler take its**
10 **existing contracts with File & Serve and with the case**
11 **management and voluntarily go through the process of**
12 **agreeing to the terms and conditions here that are**
13 **outlined in Exhibit 2 of our 30(b)(6) request, that**
14 **Tyler would not be under an obligation to do so?**
15 A. That is my understanding.
16 **Q. And safe to assume that Tyler would not do so?**
17 A. That is my understanding.
18 **Q. Okay. Now, if Tyler were willing to comply**
19 **with the terms and conditions that are in this document**
20 **we're looking at here -- Exhibit 2 to the 30(b)(6) that**
21 **was served on Tyler -- would that impact the annual**
22 **subscription fee that Tyler would charge the courts, or**
23 **is that something that would need to be evaluated as to**
24 **whether the courts would be charged something higher**
25 **than \$108,000 here in Idaho?**

1 A. If Tyler were to go through this document as
2 it pertains specifically to the Press Review Tool, then,
3 yes, it would be significantly higher than 108,000 a
4 year.
5 **Q. Do you have an estimate of what it would**
6 **likely be?**
7 A. No. In order to do that, we would have to
8 scope that work out. And it would require significant
9 resources and time to be able to go through that
10 document, so that's something we would have to look
11 into.
12 **Q. Now, also attached as Exhibit 3 to the**
13 **30(b)(6) deposition notice -- what exhibit number is**
14 **that?**
15 THE STENOGRAPHER: You said 38.
16 MS. DUKE: 38? Okay. Thank you.
17 **Q. (By Ms. Duke) Right. So nice and confusing,**
18 **Exhibit 38, Exhibit 3 to that. This was the spreadsheet**
19 **that we had provided with -- with the document showing**
20 **the court security controls that are required by the**
21 **Idaho Supreme Court.**
22 A. Just to make sure I'm looking at the right
23 one, this is Exhibit 3 native format, the Excel
24 spreadsheet?
25 **Q. Correct.**

1 A. Yes, I'm pulling it up now.
2 **Q. All right. Molly's trying to get it up there**
3 **for all of us too.**
4 **Do you know if Tyler has represented to**
5 **Ms. Dvorak that it is currently working on becoming**
6 **StateRAMP authorized?**
7 A. I'm unaware of -- of that.
8 **Q. If Tyler was working on becoming StateRAMP**
9 **authorized, would complying with the requirements in**
10 **this native Excel file from the court, Exhibit 3 to 38,**
11 **help with obtaining that authorization?**
12 A. I'm not certain. We'd have to get our
13 security team's perspective on that.
14 **Q. Right. Do you know if what the State of Idaho**
15 **is requesting in this Excel spreadsheet that's contained**
16 **within Exhibit 38 -- that's Exhibit 3 within Exhibit 38,**
17 **is essentially the same information that would need to**
18 **be answered by Tyler to become StateRAMP authorized?**
19 A. No, I was unaware of that.
20 MS. DUKE: Do you know how to get to
21 RO 138 on that?
22 **Q. (By Ms. Duke) So let me ask you: How are you**
23 **using encryption to protect the documents that are in**
24 **the press review queue? Do you know?**
25 A. One moment.

1 **Q. And that's RO 138.**
2 A. RO 138, yeah.
3 I'm sorry. Could you repeat the question? I
4 was looking for that.
5 **Q. Sure.**
6 **How are you using -- how is Tyler using**
7 **encryption to protect the documents within the press**
8 **review queue?**
9 A. Yeah. So our -- our encryption is both at
10 rest and in transit in our applications.
11 **Q. And is that the same in the clerk's queue?**
12 A. Yes, it is.
13 **Q. How about RO 155? How is Tyler monitoring for**
14 **anomalous and malicious communications to and from the**
15 **press review queue?**
16 A. To -- today, we aren't. The Press Review Tool
17 isn't live in the state of Idaho.
18 **Q. Okay. In other states where it is live, is**
19 **the press review queue being monitored for anomalous and**
20 **malicious communications to and from the press review**
21 **queue?**
22 A. We do have some security mechanisms in place,
23 yes.
24 **Q. And do you know what those are?**
25 A. The level of detail is confidential. It's not

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1 worth sharing.

2 MS. PETRONIO: High level?

3 THE DEPONENT: No, I can't. We'd have to
4 go into the -- sorry. We -- I don't -- can't go into
5 the details of those.

6 **Q. (By Ms. Duke) And I'm assuming that's for**
7 **proprietary reasons? Even with us having a protective**
8 **order entered with the court, that's still not something**
9 **that Tyler is comfortable sharing?**

10 A. Yeah. Also, it's a lack of deep knowledge
11 into the security protocols.

12 **Q. PO 158, do you know how the integrity**
13 **verification is being used to detect unauthorized access**
14 **of press review queues that are in place?**

15 A. No, I do not.

16 **Q. Do you know how Tyler, under PO 160, is**
17 **using -- or how the press review queue checks the**
18 **validity of inputs to the system?**

19 A. No, I do not.

20 **Q. And do you know how Tyler -- how the press**
21 **review queue prevents unauthorized code execution?**

22 A. Not at a detailed level.

23 **Q. And do you have an understanding that**
24 **Ms. Dvorak has asked these questions of Tyler's folks?**

25 A. Yeah. I know she's -- she's requested that --

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1 user goes in there, it makes the pool of those records
2 based upon those conditions. So if the filing status
3 changed to a rejected and that was not a configured
4 condition for the Press Review Tool, then -- then the
5 next time that that screen was refreshed or displayed,
6 it would -- that filing would no longer be available.

7 **Q. But if it had been accessed prior to it being**
8 **rejected, assuming there was a configuration factoring**
9 **in rejections, there's no notification that, "Oh,**
10 **actually what you were looking at before is inaccurate**
11 **and it has been rejected"?**

12 A. That's correct. There's no notification of
13 that.

14 **Q. Is there anything that would notify anyone in**
15 **the Press Review Tool whether a complaint has actually**
16 **been accepted?**

17 A. No. Well --

18 **Q. Again, I'm assuming it could be configured**
19 **where if it was accepted it could be then I guess moved**
20 **out of the press review queue?**

21 A. Yeah, absolutely. What I don't -- what I
22 don't remember is whether or not we display the status
23 of that filing within the tool itself. I don't believe
24 that we do. But you're correct in stating that if it's
25 configured to not be available in an accepted status,

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1 that information.

2 **Q. And do you have an understanding that Tyler**
3 **has not provided her with the details to these questions**
4 **we've just gone through?**

5 A. Yeah, that's -- that's correct.

6 **Q. Again, I think that's because you've explained**
7 **by complying with what is included there, as Exhibit 3**
8 **to Exhibit 38, would be an incredibly costly process for**
9 **Tyler, and Tyler's only going to do that in the setting**
10 **of a contract amendment or a new or renewed contract?**

11 A. That's correct.

12 **Q. So some hopefully easier questions about the**
13 **press review queue so that I understand better as well**
14 **is: Does the press review queue tool have a function**
15 **that alerts users if a complaint that was originally put**
16 **into the press review queue is actually rejected?**

17 A. We don't send any kind of alerts or
18 notifications as it pertains to the Press Review Tool.

19 **Q. Does the press review queue even receive that**
20 **type of information from File & Serve?**

21 A. Yes. It -- it -- it -- well, it doesn't
22 necessarily directly receive it. When the clerk makes
23 that determination, the status, the filing status of
24 that filing is modified in the EFM. And then the way
25 that the Press Review Tool works is every time that a

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1 then if it reaches an accepted status then it would not
2 be available.

3 **Q. Now, in the press review queue, much like**
4 **Auto-Accept, again, if the setting is configured to**
5 **confidential, that, again, is going to be on the filer**
6 **side to make sure that they are noting the proper box so**
7 **it doesn't end up into the press review queue; correct?**

8 A. Yes, that is correct.

9 **Q. And so if a submitter marks confidential**
10 **documents incorrectly and does not say confidential,**
11 **it's going to go into press review queue?**

12 A. If the press review queue was configured --
13 the Press Review Tool was configured in that way, then
14 yes.

15 **Q. And back to, sadly, the malicious side of it,**
16 **if someone wants to be malicious and not mark something**
17 **confidential, even if it is containing judge's**
18 **addresses, social security numbers, those types of**
19 **things, it would go into press review queue if**
20 **confidential was not checked had confidential been part**
21 **of the configuration?**

22 A. Yes, that is correct.

23 **Q. And does Tyler provide any type of**
24 **indemnification to the courts -- and, in this instance,**
25 **it would be the State of Idaho -- if confidential**

20 (Pages 186 to 189)

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1 documents are wrongly, you know, put into the press
2 review queue?
3 A. No, we do not.
4 Q. Now, I know if we take a look at Exhibit 9, we
5 had some questions that were ultimately answered. "We"
6 being Jennifer Dvorak, had some questions that were
7 ultimately answered by Tyler related to architecture and
8 dataflow diagrams.
9 Do you have an understanding that those have
10 not yet been provided to the State of Idaho at
11 Ms. Dvorak's request?
12 A. Yes, I do have that understanding.
13 Q. Okay. And why has Tyler not provided those
14 items?
15 A. Because those items for the Press Review Tool
16 do not exist.
17 Q. Do they exist for other Tyler products?
18 A. Yes, they do.
19 Q. Do they exist for the case management system?
20 A. Yes, I believe so.
21 Q. Do they exist for File & Serve?
22 A. Yes, they do.
23 Q. And have they been provided to the State of
24 Idaho with respect to those two applications?
25 A. I'm not sure.

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1 Q. I assume if the State of Idaho were to ask for
2 those, if they don't already have them related to those
3 two items, would they be provided?
4 A. Under the appropriate security provisions, I
5 believe so.
6 Q. Okay. Now, I know that there was a response
7 on this Exhibit 9.
8 MS. MITCHELL: Do you know which part?
9 Q. (By Ms. Duke) Let me just have Molly take a
10 look at something and I can ask you some other questions
11 while she does that.
12 A. Okay.
13 Q. So we talked about -- we talked about -- or,
14 have not talked about in your deposition yet, something
15 called "API," Tyler's API. Can you tell me what that
16 is?
17 A. Yeah, API stands for application interface.
18 Q. It's Ms. Dvorak's testimony that Tyler was
19 thinking it would have API available at the end of
20 September or end of Q3, and that that has not yet come
21 to fruition; is that correct?
22 A. No, that's incorrect. It was developed and
23 made available to our customers on September 23rd.
24 Q. All right. Do you know if the State of Idaho
25 has been advised of that in any way?

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1 A. I don't believe so. I saw some correspondence
2 earlier this week that would lead me to believe that
3 they hadn't.
4 Q. Now, the API, just describe when a customer
5 gets that -- it sounds like that occurred at the end of
6 September, what happens with API if a customer gets that
7 from Tyler?
8 A. Yeah. Sure. It's just a specification
9 document that essentially allows for the customer to
10 build their own version of a Press Review Tool, if you
11 will, calling it whatever name they deem appropriate.
12 But it would allow for them to have access to the
13 filings before a clerk makes a determination on them, so
14 after they've been submitted.
15 Q. And so the API is -- is it provided to
16 customers at no charge?
17 A. To our contract holders, yes.
18 Q. If you're not a contract holder, what is Tyler
19 paying -- or, you know, having folks pay for the API?
20 A. We're not making those available to anyone
21 outside of our contract holders.
22 Q. All right. Now, if you're a contract holder,
23 that means then that the State of Idaho would then have
24 to go obviously work with a team to then take the API
25 and actually build its own -- own computer application?

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1 A. Yes, that is correct.
2 Q. And I'm assuming you've done no looking into
3 how much that would cost the State of Idaho to do?
4 A. No, I wouldn't know that information.
5 Q. Okay. But certainly this isn't like a
6 plug-and-play. This is a, "Here's information, now
7 you've gotta go build an entire program off of it."
8 A. That's right. There's a development effort
9 required in order to build a solution that would --
10 would work. The APIs just simply provide a mechanism to
11 gain access to those filings that are currently
12 available in the Press Review Tool.
13 Q. Is Tyler looking to transition from providing
14 the Press Review Tool to instead transitioning to
15 providing its API or is it intending to do both?
16 A. No, we -- we plan to do both. We're just
17 trying to provide our customers with multiple options to
18 better serve them.
19 Q. Okay. Why did Tyler begin this process of
20 allowing API to be provided to its customers?
21 A. It was -- it was requested by several
22 customers.
23 Q. Obviously, the cost of using press review
24 queue API, there would be hardware costs to the court;
25 is that fair to assume?

21 (Pages 190 to 193)

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1 A. It's -- it's hard to speculate that, but
2 the -- the development of the program must reside
3 somewhere.
4 **Q. Okay. Certainly, there would be personnel**
5 **costs.**
6 A. If -- if the application were to be supported,
7 yes.
8 **Q. Costs of developing the press review queue**
9 **software that would then interface with the API and**
10 **actually function?**
11 A. Yeah, that's the development effort.
12 **Q. Okay. So costs to develop; right?**
13 A. I'm sorry?
14 **Q. Costs to develop it?**
15 A. Yes, that's correct.
16 **Q. I'm assuming hosting costs.**
17 A. It -- I think that depends upon where -- where
18 the State of Idaho chose to host it. You know, whether
19 it be a cloud -- commercial cloud solution or whether
20 it's hosted on-premise.
21 **Q. Okay. If hosted on-premise, they would**
22 **obviously need the -- the servers to do so?**
23 A. That's correct.
24 **Q. If hosted in a cloud, it would obviously need**
25 **a contract for whatever the price of that contract was**

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1 **to host it in the cloud?**
2 A. That's correct.
3 **Q. Now, currently, the press review queue for**
4 **Tyler is hosted by AWS; is that correct?**
5 A. That is correct.
6 **Q. It was Silverlight until October of 2021?**
7 A. No. That -- it was hosted in Tyler's databank
8 data center and we migrated it to AWS. It's -- it's
9 always been on the same software.
10 **Q. Where does Silverlight factor into what Tyler**
11 **has provided to the State of Idaho?**
12 A. Yeah. Silverlight was the old version of our
13 review tool for the clerks.
14 **Q. Oh, okay.**
15 A. We've migrated away to an HTML5 version that
16 now exists.
17 **Q. So the clerk review tool was on Silverlight**
18 **and is now on AWS?**
19 A. Silverlight is a software technology and AWS
20 is a hosting location, so the clerk review tool was on
21 Silverlight. It's now on an HTML5 version. It was also
22 in databank, which is the Tyler data center and it is
23 now in the AWS GovCloud.
24 **Q. Got it.**
25 **What courts have accepted, you know, or gotten**

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1 **Tyler's API as the -- as of when it became available at**
2 **the end of September?**
3 A. I don't have a comprehensive list. I do know
4 the State of California has access to them.
5 Specifically the --
6 **Q. Do you know --**
7 A. No.
8 **Q. And, sorry, you were saying?**
9 A. I was saying specifically the Judicial Council
10 in California.
11 And to finish your other question, no, I'm not
12 aware of any others.
13 **Q. All right. We have that document up,**
14 **Exhibit 9.**
15 **You'll see there, there's a question by**
16 **Ms. Dvorak that says: "Is ISC data hosted and stored**
17 **separately from other customers?"**
18 **And the answer was: "Idaho's data isn't**
19 **physically separated, but it isn't accessible from other**
20 **customers as it is stored within its own database."**
21 **Do you see that?**
22 A. Yes, I do.
23 **Q. Has Tyler had any issues with users that were**
24 **registered in one state court being able to access data**
25 **from another state court's system?**

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1 A. No, it wouldn't be possible.
2 **Q. So is Tyler aware that, for instance, the**
3 **State of Washington was able to access Idaho's Odyssey**
4 **File & Serve and vice versa?**
5 A. No.
6 **Q. Has -- it's also my understanding Tyler has**
7 **not provided a letter from AWS that it is a customer in**
8 **good standing; is that correct?**
9 A. That's correct.
10 **Q. And Tyler has represented, in this Exhibit 9,**
11 **Page 5303, in the middle there: "Are you able to**
12 **provide a letter from AWS that you are a customer in**
13 **good standing and which AWS environment ISC data will be**
14 **stored, processed, and transmitted?"**
15 **And you see the answer there?**
16 A. Yeah, I'm sorry. I'm having a tough time
17 trying to locate it. Where is it?
18 MS. DUKE: Oh, can you make it bigger,
19 Molly?
20 THE DEPONENT: Oh, I see it now.
21 **Q. (By Ms. Duke) Okay.**
22 A. Yes.
23 **Q. And is that a correct response by Tyler?**
24 A. Yeah. AWS isn't willing to provide us a
25 letter. I don't think they do provide those letters.

22 (Pages 194 to 197)

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1 So, yeah, we're not able to obtain one, but we do have
2 the majority of our customers in AWS operating today.
3 **Q. And would -- and that's the case with whether**
4 **you're in press review queue, File & Serve, case**
5 **management -- or not case management -- I'm sorry --**
6 **File & Serve or press review queue?**
7 A. That's correct. The majority of our customers
8 on electronic filing in File & Serve and the Press
9 Review Tool are in AWS.
10 **Q. You'll see a little bit farther down, it talks**
11 **about what cadence or regular process is used to perform**
12 **serving patching.**
13 **Do you see that little section a couple**
14 **paragraphs down?**
15 A. Yes, I do, at the very bottom.
16 **Q. Do you see how it notifies: "We do not**
17 **provide details of scan or penetration test results"?**
18 A. No, that appears to be cut off on the screen.
19 **Q. Oh, she'll move it up.**
20 A. Yes, I do see that. Mm-hmm.
21 **Q. And it sounds like although she has asked for**
22 **that related to the SOC report -- or, no, strike that.**
23 **Despite the fact she's asked for that related**
24 **to Tyler, Tyler has not been willing to provide that**
25 **information; is that correct?**

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1 A. That's correct. That's for security reasons.
2 **Q. And do you know if Microsoft performs any type**
3 **of patching on the press review server?**
4 A. Microsoft doesn't, no.
5 **Q. And does Tyler?**
6 A. Yes. We -- we provide updates to the hardware
7 in which our software exists on. Microsoft doesn't, but
8 we do.
9 **Q. And do you have documents that you would share**
10 **with the State of Idaho to confirm that?**
11 A. No, but they're informed of those updates.
12 They're notified when we make them.
13 **Q. All right. Let go to Exhibit 6.**
14 **Are you aware of Doug Hansen with the State of**
15 **Idaho asking Tyler for the infrastructure requirements,**
16 **process, and policies around it, and the security**
17 **documentations for the press review queue?**
18 A. That's what we're looking at here?
19 **Q. Correct.**
20 A. Yeah. Give me just a second, please.
21 **Q. Yeah, no problem.**
22 MS. DUKE: He might need you to scroll
23 through.
24 **Q. (By Ms. Duke) Just let Molly know if you need**
25 **to scroll.**

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1 A. Okay. I don't know if I've seen this email
2 thread, but it appears to be some of the same questions
3 that we were discussing earlier regarding watermarks and
4 security.
5 **Q. Okay.**
6 A. APIs.
7 **Q. And it's your -- oh, sorry.**
8 A. I was just saying the APIs.
9 **Q. And it's your understanding that no watermarks**
10 **or any type of -- of item could be placed on a press**
11 **review queue display, and that's because it's actually**
12 **displaying the original document?**
13 A. That's correct. It is technically feasible,
14 but it isn't an option today. It would have to be
15 developed that way.
16 **Q. Okay. Now, I know that -- and this is**
17 **separate and apart from press review queue, but I**
18 **understand there was a Portal issue in California**
19 **related to the California State Bar's Odyssey Portal.**
20 **Do you -- do you have that knowledge?**
21 A. Yes, I have -- I have a little bit.
22 **Q. Okay. And what's your understanding of -- of**
23 **how that breach occurred in the State of California with**
24 **respect to the State Bar's Odyssey Portal?**
25 A. It didn't -- it wasn't with regards to the

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1 Press Review Tool.
2 **Q. No, I understand that. Correct.**
3 **What tool was it with respect to?**
4 A. It was the online repository tool that we have
5 called Odyssey Portal.
6 **Q. And it's my understanding the reason it**
7 **happened was there was a -- I guess, a check that could**
8 **be made in the portal itself and that with that check**
9 **being in there it permitted access that was**
10 **unanticipated or unexpected. Is that a proper**
11 **understanding?**
12 MS. PETRONIO: I'm just going to --
13 (inaudible).
14 THE STENOGRAPHER: I can't hear you.
15 MS. PETRONIO: I'm just objecting to the
16 form of the question. I'm actually not going to let him
17 answer that because it's the subject of pending
18 litigation, and I think it's an inaccurate
19 characterization of what happened. But, also, he's not
20 designated on that topic, so I think it would be a
21 mistake for us to let him answer that.
22 MS. DUKE: All right. Thank you.
23 **Q. (By Ms. Duke) So you were designated, as**
24 **Item No. 6, as somebody that could identify the courts**
25 **that implemented Auto-Accept and/or the Press Review**

23 (Pages 198 to 201)

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1 **Tool for civil, criminal, or other categories of**
2 **filings, including courts that have used Tyler-provided**
3 **APIs to implement the Press Review Tool.**

4 **I think we can take that last part out,**
5 **because that's just come out, and I doubt those -- those**
6 **courts are up and running yet with that; is that fair?**

7 A. Yes, that is correct.

8 **Q. So just the first part of that, do you have a**
9 **list of -- of the courts that have, in fact, implemented**
10 **Auto-Accept Review and/or Press Review Tool?**

11 A. Yeah. I don't -- I don't have that
12 comprehensive list in front of me. I do know that there
13 are about 25 of each, and I can give you a handful of
14 each, but I don't have that list in front of me now.

15 **Q. I'm assuming that's a list you could give your**
16 **counsel and she could just send us an email with it?**

17 A. If it's appropriate, yeah.

18 **Q. It's something we asked for in this 30(b)(6),**
19 **so I can appreciate it's hard for you to remember 25**
20 **different courts for each of those various programs, so**
21 **if it's easier to have that in a list you email to us or**
22 **in a list we take a quick break on and you read it, it**
23 **doesn't matter to me.**

24 **If you can give me a couple examples, that**
25 **would be great, for each.**

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1 A. Yeah. Sure. And I think I provided them
2 earlier, but I'm happy to restate them. So for the
3 Auto-Accept, you know, the State of Maryland; the State
4 of Maine; the State of Vermont; Harris County, Texas;
5 and, the Los Angeles Superior Court in California.

6 For the Press Review Tool, Gwinnett County,
7 Georgia; Fulton County, Georgia; DeKalb County, Georgia;
8 Travis County, Texas; and, Clark County, Nevada.

9 **Q. All right. Has Tyler been made aware of any**
10 **complaints as to -- oh, strike that. I already asked**
11 **you that so don't worry about that.**

12 **All right. I believe I already asked you this**
13 **but it's been a long day for all of us. Has Tyler**
14 **received any reports of any security breaches related to**
15 **its press review queue?**

16 A. We have not.

17 **Q. Now, I know we also had identified Topic 19,**
18 **which is a document that Tyler sent to CNS related to**
19 **CNS sending to various courts the PowerPoint that we've**
20 **been going through with you today.**

21 **Are you aware of that?**

22 A. Yes, I am.

23 **Q. All right. And what was Tyler's concern with**
24 **respect to Mr. Girdner's forwarding of that PowerPoint**
25 **to those courts?**

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1 A. We -- we had received some concern from some
2 of our customers regarding feedback, specifically that
3 it -- it was perceived as Tyler and Courthouse News were
4 in a partnership of some sort and we just wanted to be
5 clear that that wasn't the case.

6 **Q. Do Tyler and Courthouse News have any**
7 **partnership whatsoever?**

8 A. We do not.

9 **Q. Exhibit 4 asked -- to the deposition notice**
10 **asked that CNS provide to Tyler the communications that**
11 **CNS was sending to the courts at issue.**

12 **Do you know if CNS has done that?**

13 A. I do not.

14 **Q. And do Tyler and CNS have any type of**
15 **arrangement with respect to CNS advocating for the**
16 **implementation of a press review queue in the federal**
17 **court in the state of Idaho?**

18 A. We do not.

19 **Q. Did Tyler have an understanding prior to**
20 **this -- the 30(b)(6) notices, in this case, as to what**
21 **CNS has identified to the court as options for the Idaho**
22 **Courts related to CNS's request for an injunction in**
23 **this case?**

24 A. No.

25 **Q. I'm assuming that Tyler will not be**

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1 **representing to the Idaho Federal District Court Judge,**
2 **Judge Nye, that Tyler is taking a position that the**
3 **State of Idaho State Courts should, in fact, implement**
4 **the press review queue through Tyler either through its**
5 **application or its API; is that correct?**

6 A. That is correct. We would not take a position
7 on that.

8 **Q. And that is also the same case with respect to**
9 **Auto-Accept?**

10 A. That is correct, yeah. We -- our role as a --
11 in our partnership with the Idaho State Court is to
12 serve our partner. And -- and we provide software and
13 then provide the direction of additional options of
14 configuration and availability of those options, but
15 take the direction as to which of those we implement by
16 the -- by our customers, so we're here to serve our
17 customers.

18 **Q. I will tell you that Mr. Girdner has**
19 **represented to the federal judge in this case,**
20 **Judge Nye, that Tyler has implemented its press review**
21 **queue for free with courts; is that correct?**

22 A. Yeah. Historically, we have made it available
23 to a few courts for free.

24 **Q. All right. And is that the process that Tyler**
25 **is following now?**

24 (Pages 202 to 205)

1 A. No, it is not. In fact, the Press Review Tool
2 was built for a specific county, Clark County, Nevada,
3 in 2014, as part of their agreement, and was provided a
4 few times thereafter for free. As it started to gain
5 traction, we ended up realizing that there was a true
6 expense associated with it as more and more customers
7 started to use it. And so for those courts that do have
8 it for free, upon their contract renewal for their
9 e-filing platform, those -- those topics are being
10 revisited.
11 **Q. And now as we've discussed before, at a**
12 **minimum, the Idaho Courts would need to pay a \$108,000**
13 **subscription and likely higher given the security**
14 **protocols that it has asked for Tyler to confirm and**
15 **adopt?**
16 A. Yes. 108,000 for the subscription license.
17 And if that security provision was a requirement, then,
18 yeah, that would likely be factored into the offering.
19 **Q. Would you agree that Auto-Accept does not**
20 **substitute for a clerk's review of a document?**
21 A. I can't answer that. That's subjective, and I
22 think it -- it depends upon each clerk's business
23 process as to whether or not that's a realistic
24 assessment.
25 (Pause in the proceedings.)

1 **Q. (By Ms. Duke) Okay. Is Tyler aware, in this --**
2 **this lawsuit, that CNS has represented the following to**
3 **our federal district court, "Cost: Finally, defendant**
4 **claims Tyler provided a recent quote of 108,000 per year**
5 **to configure a press review queue raising serious**
6 **questions about the ability of private companies to**
7 **profit from the public record at the expense of the**
8 **First Amendment. An unreasonable vendor 'does not allow**
9 **Idaho Courts to abdicate their responsibility to provide**
10 **timely access to public court records.' Defendant and**
11 **this court should be extremely skeptical of this quoted**
12 **price tag as Tyler has installed its press review queue**
13 **feature for numerous other courts at no charge."**
14 **I'll represent that that's in the Reply in**
15 **Support of Plaintiff Courthouse News' Motion for**
16 **Preliminary Injunction on Page 10.**
17 **Has Tyler provided numerous other courts the**
18 **press review at no cost or no charge?**
19 A. I think your first question was: Was I aware
20 of this?
21 **Q. Correct.**
22 A. The answer is no.
23 **Q. Okay.**
24 A. The second question is: Have I -- have we
25 provided that access to numerous. Numerous is a

1 subjective term, so I'd have to understand how many
2 numerous is.
3 As I stated just a few moments ago, we have
4 provided it historically for free, but each of those
5 contracts are being revisited upon renewal.
6 **Q. How many contracts have had it for free?**
7 A. I don't know that number off the top of my
8 head.
9 **Q. Is it most of them? A few of them? Half of**
10 **them? Any estimate?**
11 A. Let's see. The first -- let me see if I can
12 get this right. We implemented the solution and created
13 it for Clark County, Nevada, in 2014. Over the course
14 of the next four years, it was adopted by two other
15 courts, which I believe got it for free. And since then
16 it has been adopted by the remaining 23, which I believe
17 the majority of those are paying for.
18 **Q. Okay. And regardless of past practice, Tyler**
19 **has determined that given Tyler's costs and the market**
20 **for the product, the press review queue will carry at**
21 **least a minimum \$108,000 subscription cost per year?**
22 A. That is correct for a statewide implementation
23 like the State of Idaho.
24 **Q. Did -- were you involved -- was Tyler involved**
25 **at all with respect to the Arizona Courts recently**

1 **developing a press review queue?**
2 A. No. Unfortunately, we don't have the e-filing
3 business in the state of Arizona yet.
4 **Q. And do you know who does?**
5 A. I do not.
6 MS. DUKE: Okay. I'm just looking
7 through my notes here real quick. I know we're close.
8 MR. FETTERLY: I know we're close, and I
9 also have just a few follow-up questions based on this
10 afternoon's session, so I wanted to just put that out
11 there.
12 MS. PETRONIO: Well, let me just say he's
13 already 30 minutes late for an event that he's hosting
14 at his house, so anything you can do to keep this as
15 brief as possible is much appreciated.
16 MR. FETTERLY: Maybe I can ask them while
17 Keely's looking through her notes?
18 MS. DUKE: Sure. Go for it.
19
20 EXAMINATION
21 BY MR. FETTERLY
22 **Q. Mr. Derrick, just a few follow-ups here.**
23 **There was some testimony about -- a lot of testimony**
24 **about documents submitted to the court and received into**
25 **the EFM and the eFile & Serve.**

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Page 210

1 **Who owns the documents that are submitted to**
2 **and received by the EFM and eFile & Serve?**
3 MS. DUKE: Object to the form.
4 Foundation. Legal conclusion.
5 THE DEPONENT: Yeah. I -- I can't speak
6 to the ownership of those documents. It's -- I don't
7 know if it's still the filer or --
8 **Q. (By Mr. Fetterly) As between Tyler or the**
9 **court?**
10 MS. DUKE: Same objections.
11 THE DEPONENT: Yeah. Tyler provides the
12 software. We don't own any of the documents or data
13 that is traversing through.
14 **Q. (By Mr. Fetterly) And the court's case**
15 **management -- or, the Odyssey Case Management System is**
16 **hosted in Idaho by Idaho but it's Tyler's application;**
17 **correct?**
18 A. Yes, that is correct.
19 **Q. And we were also talking about the -- the**
20 **document that's Exhibit 1 to the Courthouse News**
21 **subpoena being prepared for Texas. I just want to**
22 **clarify, it's my understanding that document was**
23 **prepared for Texas, but the Press Review Tool app was**
24 **not prepared for Texas; is that correct?**
25 A. Yes, that is correct.

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1 **Q. Tyler doesn't have different -- different**
2 **Press Review Tool apps per state; correct?**
3 A. Yes. Each individual state is a different
4 implementation and that's a different instance of that
5 application. It's the same application, but it -- just
6 like we said before, it's not the same, so Idaho's would
7 be different than Texas would be different than
8 California's.
9 **Q. Correct. So the configurations vary by state**
10 **or by court, but the app itself does not -- correct? --**
11 **otherwise.**
12 A. The app itself is not a multi-tenant app like
13 our review tool is for the clerks. So there are
14 different instances of that app in each one of those
15 states.
16 **Q. Counsel was asking you questions about the**
17 **ability to watermark documents in the Press Review Tool.**
18 **Could Tyler develop that for its customers if the**
19 **customers requested it?**
20 A. Yeah. I mean, we're capable of doing that,
21 sure.
22 **Q. Earlier, there was testimony regarding**
23 **issues -- counsel was asking questions about potential**
24 **issues with filing fees being accurate or correct in the**
25 **Auto-Accept paradigm.**

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1 **Have courts using Auto-Accept -- have they**
2 **actually had the kind of payment issues defense counsel**
3 **described?**
4 MS. DUKE: Objection. Foundation.
5 THE DEPONENT: Yeah. I'm -- I'm not
6 intimately familiar with those issues if they have
7 transpired.
8 **Q. (By Mr. Fetterly) Would Tyler have the ability**
9 **to create or develop a configuration for the auto-review**
10 **so that a -- a fixed or hard amount would be required in**
11 **order to meet the conditions for Auto-Accept?**
12 A. Yeah. I mean, we could -- we're a technology
13 company. We could develop a lot of things, sure.
14 **Q. So if the filing fee is \$225, a condition**
15 **could be configured or developed such that if \$225 is**
16 **the filing fee, then conditions says "yes, could be**
17 **Auto-Accept," and if it is not then, "no, not**
18 **Auto-Accept." Is that -- that could be developed?**
19 MS. DUKE: Foundation.
20 THE DEPONENT: Yeah. We would have to
21 get the technical teams involved in the scoping of that,
22 but...
23 **Q. (By Mr. Fetterly) Okay. Is Amazon Web Services**
24 **GovCloud FedRAMP-approved?**
25 A. I -- I don't know. I don't know if they are.

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1 **Q. Does Tyler have any concerns about the**
2 **security provided by AWS GovCloud relative to the**
3 **documents submitted to eFile & Serve?**
4 A. No, we do not.
5 **Q. The -- do you have any reason to believe the**
6 **information on Idaho's case management system is more**
7 **secure than the information on the EFM hosted by Tyler?**
8 MS. DUKE: Objection. Foundation. He
9 testified he didn't know what any of our safety
10 protocols were.
11 THE DEPONENT: Yeah. I can't speak to
12 any of the security configurations or setting or
13 protocols leveraged in an environment that's not owned
14 by Tyler.
15 **Q. (By Mr. Fetterly) Are there any ways in which**
16 **the Press Review Tool presents security issues that**
17 **would not also be presented by File & Serve?**
18 MS. DUKE: Object to the form.
19 Foundation. Overbroad. And, actually, he's already
20 testified to some.
21 THE DEPONENT: I'm sorry. Say that one
22 more time?
23 **Q. (By Mr. Fetterly) Yeah. I'm just -- are there**
24 **any ways in which the Press Review Tool presents a**
25 **security issue that would not be also presented by**

26 (Pages 210 to 213)

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1 **File & Serve?**
2 MS. DUKE: Same objections. He's already
3 testified to some.
4 Go ahead.
5 THE DEPONENT: Yeah. I -- the Press
6 Review Tool is -- yeah. I mean, we would -- we would
7 monitor both and -- and do what we can to protect both.
8 **Q. (By Mr. Fetterly) Okay. And then defendant's**
9 **counsel was asking whether Tyler indemnifies clients**
10 **based on improper use of documents accessed via the**
11 **Press Review Tool.**
12 **Does Tyler indemnify clients based on improper**
13 **use of documents accessed via the EFM?**
14 A. I'm not sure if we do. I'd have to look at
15 the contract.
16 **Q. Same question with respect to the case portal.**
17 A. The Odyssey Portal?
18 **Q. Odyssey Portal.**
19 A. Yeah. I'm not familiar with those contracts.
20 I would have the look into them.
21 **Q. I think last one here. Does -- does**
22 **eFile & Serve comply with the Idaho's cloud-based terms**
23 **and conditions?**
24 MS. DUKE: Object to the form.
25 Foundation. Asked and answered.

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1 THE DEPONENT: Yeah. The -- those --
2 those were established after the agreement that we have
3 with them was in place.
4 MR. FETTERLY: Thank you. I have nothing
5 further.
6 MS. DUKE: One last quick question.
7 THE DEPONENT: I did --
8 MS. DUKE: Oh, go ahead, Mr. Derrick.
9 THE DEPONENT: I was just going to say
10 one follow-up that I owed you, Mr. Fetterly, is the
11 document type is not the filing type, when we were
12 talking about that in terms of the Press Review Tool and
13 how it pertains to the EFSP. The document type is
14 related to the document security groups, which,
15 unfortunately, in the exhibits, I did not see that
16 screen which is another click or two down from the
17 screen that you did provide.
18 **Q. (By Mr. Fetterly) Okay. So just to clarify**
19 **real quick, I'm looking at the Exhibit 1 to the**
20 **subpoena, we just talked about the document type. I**
21 **know my question about document type was also related to**
22 **filing code.**
23 **We do see filing code here on the conditions;**
24 **correct?**
25 A. Right. For the Auto-Accept, but it isn't

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1 available on the conditions for the Press Review Tool.
2 **Q. I see. I see. So that filing code there is**
3 **not available for the Press Review Tool. It is**
4 **available for the Auto-Accept.**
5 **And just so we're clear on that, I'm now**
6 **putting that back up on to the screen. And so here we**
7 **have the filing code. This would be a condition to be**
8 **configured for the Auto-Accept; correct?**
9 A. Correct, but not for the Press Review Tool.
10 **Q. Gotcha. Thank you for clarifying.**
11 A. You're welcome.
12 **Q. And just for the record, I'm showing the**
13 **witness Exhibit No. 37, CNS 013289, where we have the**
14 **filing code menu pulled down.**
15
16 EXAMINATION
17 BY MS. DUKE
18 **Q. Mr. Derrick, I'll go ahead and ask a couple**
19 **follow-ups here and then we'll get you back there to get**
20 **you to your party.**
21 A. Okay. Thank you.
22 **Q. You were just asked questions by Mr. Fetterly,**
23 **of, oh, Tyler could do this, Tyler could do that if a**
24 **client asked.**
25 **Tyler's going to charge a fee to do certain**

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1 **things like that, isn't it?**
2 A. Absolutely.
3 **Q. So those are not things that come free?**
4 A. That is correct.
5 **Q. Has CNS, at any point in time, reached out to**
6 **Tyler and tried to contract with Tyler to make the cost**
7 **associated with the press review queue less laborious on**
8 **the state courts?**
9 A. Not that I'm aware of.
10 **Q. Has Tyler -- excuse me -- has CNS, at any**
11 **point in time, reached out to Tyler to offer making**
12 **Auto-Accept more plug-and-play for each of the courts?**
13 A. Not that I'm aware of.
14 **Q. All right. Thanks a lot for your time today.**
15 **We appreciate it.**
16 MR. FETTERLY: Thank you, Terry.
17 THE DEPONENT: Hopefully, this was
18 helpful.
19 MS. DUKE: It was very helpful. Thank
20 you very much.
21 MR. FETTERLY: Very helpful. Thank you
22 very much. We appreciate your time.
23 (Deposition concluded at 4:06 p.m.)
24 (Signature reserved.)
25 --o0o--

27 (Pages 214 to 217)

CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

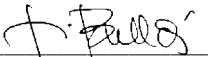
The undersigned Certified Shorthand Reporter and Deposition Notary Public of the State of California does hereby certify:
That the foregoing 30(b)(6) deposition of Tyler Technologies designee Terry Derrick was taken before me remotely at the time, at which time the witness was duly sworn by me;

That the testimony of the witness and all objections made at the time of the deposition were recorded stenographically by me and were thereafter transcribed, said transcript being a true and correct copy of the proceedings thereof.

I further certify that I am neither counsel for nor related to any party to said action, nor in any way interested in the outcome thereof.

Further, that if the foregoing pertains to the original transcript of a deposition in a federal case, before completion of the proceedings, review of the transcript was requested/offered on the record.

In witness whereof, I have subscribed my name on this 15th day of November 2022



Nicole A. Buldis, RPR
CA CSR No. 14441



A	accessed 188:7 214:10,13	181:13 206:19	API 191:15,15,17 191:19 192:4,6,15	126:22 129:1
abdicate 207:9	accessible 196:19	agreeing 182:12	192:19,24 193:15	130:23 131:9,18
ability 134:18	accessing 174:10	agreement 127:13	193:20,24 194:9	145:22 173:9
171:3 173:5	176:11,22	206:3 215:2	196:1 205:5	179:13 186:24
174:18 176:10	accompanies	Ah 157:19	APIs 193:10 200:6	198:21,23 202:18
177:4 178:6 207:6	133:17	ahead 118:4 119:20	200:8 202:3	203:10,12 204:9
211:17 212:8	account 131:23	156:9 161:5 214:4	apologize 136:2	204:10 206:14
able 128:11 133:3	accurate 134:6	215:8 216:18	app 210:23 211:10	214:25 216:22,24
134:5 137:4	164:23 172:22	alerts 187:15,17	211:12,12,14	asking 120:19
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EXHIBIT G

Deposition of 30(b)(6) Terry Derrick - Vol. I

Courthouse News Service v. Omundson

November 10, 2022



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1 the question. I just don't know how quickly we can get
2 a response.
3 MR. FETTERLY: Sure. Thank you.
4 (Pause in the proceedings.)
5 THE DEPONENT: I sent that inquiry. I'll
6 let you know when I receive a response.
7 **Q. (By Mr. Fetterly) Thank you.**
8 A. Sure.
9 **Q. Going back to my screen share here, I'm still**
10 **on Exhibit No. 37. All I've done is scroll down a few**
11 **pages to the document that's Bates labeled CNS_13284.**
12 A. Okay.
13 **Q. And, Mr. Derrick, do you recognize -- well,**
14 **first, this is a -- another webpage screenshot of a**
15 **webpage and, Mr. Derrick, do you recognize this webpage?**
16 A. Yes, I do.
17 **Q. And what is it?**
18 A. This is the older version of our filing
19 portal, specifically, the start a new case screen.
20 **Q. Okay. And when you say "older," it's the same**
21 **older version that we were just discussing before we had**
22 **our break?**
23 A. Yes, just a few moments ago.
24 **Q. I -- just a couple of real quick questions**
25 **about this just before we move on to the more-detailed**

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1 **questions about the press tool and Auto-Accept.**
2 **I understand there are a couple of -- under**
3 **case information, under start a new case, there are a**
4 **couple of pull-down menus, but my understanding is that**
5 **these would be the -- the pull-down menus that would be**
6 **made available to a filer using this version of**
7 **File & Serve during their drafting stage or status of**
8 **preparing their filing for submission; is that correct?**
9 A. That is correct.
10 **Q. So under case information, we see a few -- I**
11 **guess I'll call them prompts or pull-down menus that**
12 **would be, you know, required for the filer to select as**
13 **part of their drafting and submission process; is that**
14 **correct?**
15 A. That is correct.
16 **Q. Okay. I'm now scrolling down to the next**
17 **page, which is 13285. Under location, this screenshot**
18 **is the same -- same webpage. It's just this page**
19 **reflects the options or some of them under the location**
20 **drop-down menu. Do you see that?**
21 A. Yes, I do.
22 **Q. Would -- would these locations, once selected,**
23 **affect kind of, you know, where within the EFM the**
24 **filing is routed and/or relate to -- affect the clerk**
25 **inbox that it is surfaced into?**

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1 MS. DUKE: Form and foundation.
2 THE DEPONENT: They could. It depends on
3 the configuration.
4 **Q. (By Mr. Fetterly) Right.**
5 **So a court could configure their press --**
6 **strike that.**
7 **A court could configure their location options**
8 **and their File & Serve system so that if the filer**
9 **selects Ada County District Court, the filing would then**
10 **be routed to a clerk review queue that's for the Ada**
11 **County District Court; is that correct?**
12 MS. DUKE: Again, foundation.
13 THE DEPONENT: They could, yes.
14 **Q. (By Mr. Fetterly) Moving on to the next page**
15 **here, this is the page Bates labeled 13286. Here, we**
16 **see a different pull-down menu. This is the category**
17 **civil, family, guardianship, probate, or mental health.**
18 **Those are the options that are reflected here. These**
19 **would also be, you know, prompts that a filer would be**
20 **required to select while they're going -- while they're**
21 **in the drafting or submission phase of their filing;**
22 **correct?**
23 A. That is correct.
24 **Q. And so this would be the -- the category of**
25 **the case before we have the location which is the court**

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1 **location. This is now the case category.**
2 **And then moving on, I see we have one more,**
3 **it's the case type. And this is reflected on CNS 13287,**
4 **and I'll show you this.**
5 A. Yes.
6 **Q. And this case type would be also another, you**
7 **know, series of selections that a filer would be**
8 **required to -- a series of options a filer would be**
9 **required to select as part of their drafting and**
10 **submission process for a filing; correct?**
11 A. That is correct.
12 **Q. Okay. Thank you. I appreciate you bearing**
13 **with me here. I just want to make sure we have a common**
14 **understanding of location, category, case type as we now**
15 **go back to the attachment to the subpoena, so I'll go**
16 **there now.**
17 **Okay. Mr. Derrick, I now have turned back to**
18 **Exhibit 33. This is the subpoena. And this is the**
19 **Exhibit 1 to the subpoena, a document titled**
20 **"Auto-Accept Review and Press Review Tool" dated**
21 **July 1, 2022.**
22 **I'm now going to the second page, which is**
23 **SO 3. Do you see that in front of you?**
24 A. Yes, I do.
25 **Q. That first paragraph where we're talking about**

15 (Pages 57 to 60)

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1 the Auto-Accept Review on the left-hand column, it talks
2 about the Auto-Accept Review as a free out-of-the-box
3 e-filing function that allows clerks to automatically
4 accept filings based on a set of conditions. And then
5 it goes on to say: "Conditions can be configured using
6 the same criteria that is used to define which review
7 queues filings are routed to, allowing clerks to
8 configure the solution to meet their needs."

9 I just want to better understand that. Can
10 you explain to me what the conditions are that can be
11 configured to facilitate the Auto-Accept Review?

12 A. Yeah. I can provide some examples, but I
13 won't be able to give you an absolute.

14 I'm sorry. I'm just receiving a confirmation
15 on my screen that says my internet was unstable, so
16 perhaps that was part of the problem with the audio
17 before. Apologies. Can you guys still hear me okay?

18 Q. Yes.

19 A. Okay. Yes, I can provide you a few examples.
20 I don't have a comprehensive list in front of me.

21 An example would be case category; case type;
22 party type, so plaintiff or defendant; filer type, which
23 would be, you know, a legal professional versus a
24 self-represented litigant type thing. Just different
25 options like that; contains financials, doesn't contain

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1 exception of location. The conditions themselves live
2 within a location.

3 Q. Understood.

4 So if I'm understanding you correctly, then,
5 the -- the location would be set first. And then once
6 the location is set, then within that location, the
7 court would be able to configure the Auto-Accept Review
8 based upon case type, case category, the other
9 conditions you identified; correct?

10 A. That is correct.

11 Q. So this would allow a statewide system, for
12 instance, to configure -- it would allow courts within a
13 statewide system to configure their Auto-Accept Reviews
14 based upon their respective locations such that each
15 location could configure according to its wishes or
16 needs; correct?

17 MS. DUKE: Form and foundation.

18 THE DEPONENT: Yes, that's correct.

19 Q. (By Mr. Fetterly) Thank you.

20 I'm going to go down to the next page here.
21 Auto-Accept Review, it reads: "E-filing function that
22 allows clerks to automatically accept filings if the
23 filing matches locally configured criteria"; is that
24 correct?

25 A. Yes, it is.

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1 financials, et cetera.

2 Q. Mm-hmm. If the -- if a particular version of
3 the File & Serve system -- strike that.

4 If a particular version of the File & Serve
5 solution is configured so that a filer is, you know,
6 given the option to choose between confidential or
7 public, some type of security feature, would that be yet
8 another way, another condition that could determine
9 whether or not a filing is automatically accepted?

10 A. I'm not sure if filing security is an option
11 that we have in the Auto-Accept function.

12 Q. Okay. Well, I think we'll -- we'll get there
13 in a minute.

14 But as far as the conditions you've just
15 identified, case category, case type, party type, filer
16 type, you know, those were examples of the types of
17 conditions that could be used to configure the
18 Auto-Accept Review; correct?

19 A. Correct.

20 Q. So a minute ago, we were looking at the -- the
21 version of the File & Serve solution and, specifically,
22 we were looking at location, case type, case category.
23 Those would be examples of the types of conditions that
24 could be configured; correct?

25 A. Everything you said was true with the

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1 Q. And so, again, here we have conditions that
2 can be configured based upon filing firms, filing codes.
3 Again, I don't want to repeat them all, but this is what
4 we were just discussing in terms of the conditions or
5 types of conditions that would allow for configuration;
6 correct?

7 A. Correct.

8 Q. It says here: "Auto-Accept: How does it
9 work? Number 1, upon submission, filings are evaluated
10 against the locally configured auto-review conditions."

11 Can you just explain what that means?

12 A. Yeah. So once the filings have been submitted
13 and they reach the EFM, the EFM then evaluates those
14 filings and the criteria of those filings based upon the
15 configurations of those conditions to see if it meets
16 any of those conditions.

17 Q. And this is all done on an automated basis;
18 correct?

19 A. That's correct.

20 Q. And then we move on to the -- and, again, just
21 for the record, I'm looking at SO 5, Number 2: "If the
22 envelope details do not meet the auto-review conditions,
23 the envelope is routed to the appropriate review queue
24 to be reviewed by clerk as it is today."

25 So that -- I think I understand what that

16 (Pages 61 to 64)

CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

The undersigned Certified Shorthand Reporter and Deposition Notary Public of the State of California does hereby certify:

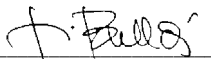
That the foregoing 30(b)(6) deposition of Tyler Technologies designee Terry Derrick was taken before me remotely at the time, at which time the witness was duly sworn by me;

That the testimony of the witness and all objections made at the time of the deposition were recorded stenographically by me and were thereafter transcribed, said transcript being a true and correct copy of the proceedings thereof.

I further certify that I am neither counsel for nor related to any party to said action, nor in any way interested in the outcome thereof.

Further, that if the foregoing pertains to the original transcript of a deposition in a federal case, before completion of the proceedings, review of the transcript was requested/offered on the record.

In witness whereof, I have subscribed my name on this 15th day of November 2022



Nicole A. Buldis, RPR
CA CSR No. 14441



Keely E. Duke
ISB #6044; ked@dukevett.com
Molly Mitchell
ISB # 10035 mem@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendant.

CASE NO. 1:21-CV-00305-DCN

**ANSWER TO COMPLAINT AND
DEMAND FOR JURY TRIAL**

Defendant Sara Omundson, by and through her undersigned counsel of record, hereby provides her answer and response to Plaintiff's Complaint, and thereby admits, denies, and alleges as follows.

FIRST DEFENSE

Plaintiff's Complaint, and each and every allegation therein, fails to state a claim against Ms. Omundson upon which relief can be granted and, as such, should be dismissed.

SECOND DEFENSE

Ms. Omundson denies each and every allegation of Plaintiff's Complaint except those specifically admitted herein. Ms. Omundson denies all remaining allegations for the following

reasons: Plaintiff's characterizations are improper, the allegations are not accurate, the allegations call for a legal conclusion, and/or Ms. Omundson does not have sufficient information or knowledge to respond.

THIRD DEFENSE

With respect to the specific allegations contained in Plaintiff's Complaint, Ms. Omundson admits, denies, and/or alleges as follows:

1. With regard to the allegations and statements made in paragraph 1, Ms. Omundson admits only that the Administrative Office of the Courts for the Judicial Branch of the State of Idaho is involved with the oversight and maintenance of Idaho's electronic court records filing system. Ms. Omundson is without sufficient information or knowledge of the remaining allegations and/or Plaintiff's remaining characterizations are improper and therefore Plaintiff denies the same.

2. With regard to the allegations and statements made in paragraph 2, Ms. Omundson admits that it began to move from exclusively in-clerk's office court document submission to providing a platform for electronic court document submission in 2016, which process was not complete until October 2018. Ms. Omundson admits that Plaintiff, through counsel, sent a letter to Director Omundson dated June 14, 2021, to request that Idaho's state courts employ an electronic media inbox to provide it access to new civil complaints. Ms. Omundson admits that Plaintiff sent a letter, through counsel dated December 28, 2016, to Michael Henderson, legal counsel for the Idaho Supreme Court, also requesting an electronic inbox for the media to see complaints. Ms. Omundson admits Plaintiff sent a letter dated April 28, 2016, to Christopher Risch, Clerk of the Ada County District Court regarding a proposal to meet regarding the transition to e-filing. Ms. Omundson denies all remaining allegations in paragraph 2, including Plaintiff's

characterizations.

3. With regard to the allegations and statements made in paragraph 3, Ms. Omundson admits to knowing about the Tyler Technologies, Inc. software environment referred to as a “Press Review Queue.” Ms. Omundson denies the remaining allegations of paragraph 3, including Plaintiff’s characterizations.

4. Ms. Omundson denies the allegations of paragraph 4.

5. Ms. Omundson denies the allegations of paragraph 5.

6. With regard to the allegations made in paragraph 6, Ms. Omundson admits Plaintiff, through counsel, sent a letter to Director Omundson dated June 14, 2021, and that the content of the document speaks for itself. Ms. Omundson denies any remaining allegations in paragraph 6, including Plaintiff’s characterizations.

7. With regard to the allegations and statements made in paragraph 7, Ms. Omundson admits that she provided a letter dated July 6, 2021, to Plaintiff through its counsel and that the content of the document speaks for itself. Ms. Omundson denies any remaining allegations in paragraph 7.

8. Paragraph 8 states legal conclusions to which no answer is required. To the extent these legal conclusions are deemed to be conclusions of fact, they are hereby denied.

9. With regard to the allegations made in paragraph 9 regarding this Court’s jurisdiction, Ms. Omundson admits the Court has subject matter jurisdiction and that she is subject to personal jurisdiction in the District of Idaho. Ms. Omundson denies any remaining allegations in paragraph 9, including Plaintiff’s characterizations.

10. With regard to the allegations made in paragraph 10 regarding venue, Ms. Omundson admits that venue in the District of Idaho is proper. Ms. Omundson denies any

remaining allegations in paragraph 10, including Plaintiff's characterizations.

11. With regard to the allegations in paragraph 11, Ms. Omundson is without sufficient information or knowledge to admit or deny and therefor denies the same.

12. With regard to the allegations in paragraph 12, Ms. Omundson Sara Omundson admits she is currently the Administrative Director of Idaho Courts and admits she oversees only partial administration of Idaho's e-filing system. Ms. Omundson denies all remaining allegations in paragraph 12, including Plaintiff's characterizations.

13. Ms. Omundson denies the allegations of paragraph 13.

14. Ms. Omundson denies the allegations of paragraph 14.

15. Ms. Omundson denies the allegations of paragraph 15, which call for legal conclusions.

16. With regard to the allegations in paragraph 16, Ms. Omundson admits that Plaintiff has a website at the address of www.courthousenews.com. Ms. Omundson is without sufficient information or knowledge to admit or deny the remaining allegations in paragraph 16.

17. With regard to the allegations in paragraph 17, Ms. Omundson is without sufficient information or knowledge to admit or deny and therefor denies the same.

18. With regard to the allegations in paragraph 18, Ms. Omundson is without sufficient information or knowledge to admit or deny and therefor denies the same.

19. With regard to the allegations in paragraph 19, Ms. Omundson is without sufficient information or knowledge to admit or deny and therefor denies the same.

20. With regard to the allegations in paragraph 20, Ms. Omundson is without sufficient information or knowledge to admit or deny and therefor denies the same.

21. With regard to the allegations in paragraph 21, Ms. Omundson is without sufficient

information or knowledge to admit or deny and therefor denies the same.

22. With regard to the allegations in paragraph 22, Ms. Omundson is without sufficient information or knowledge to admit or deny and therefor denies the same.

23. With regard to the allegations in paragraph 23, Ms. Omundson is without sufficient information or knowledge to admit or deny and therefor denies the same.

24. With regard to the allegations in paragraph 24, Ms. Omundson admits only that Plaintiff made requests to officials within the Idaho Court system regarding access to new civil complaint documents. Ms. Omundson denies the remaining allegations in paragraph 24, including Plaintiff's characterizations.

25. With regard to the allegations in paragraph 25, Ms. Omundson admits that public access terminals are located in Idaho's courthouses, which provide public access to newly filed civil complaints during Clerks' office business hours. Ms. Omundson is without sufficient information or knowledge to respond to the remaining allegations in paragraph 25 and therefore denies the same.

26. Ms. Omundson denies the allegations of paragraph 26, including Plaintiff's characterizations.

27. With regard to the allegations in paragraph 27, Ms. Omundson admits a complaint was filed in the District Court for the First Judicial District for the County of Kootenai and assigned the Case Number CV28-21-4053. Ms. Omundson is without sufficient information or knowledge to admit or deny the remaining allegations in paragraph 27 and therefor denies the same.

28. Paragraph 28 states legal conclusions to which no answer is required. To the extent these legal conclusions are deemed to be conclusions of fact, they are hereby denied.

29. Paragraph 29 states legal conclusions to which no answer is required. To the extent

these legal conclusions are deemed to be conclusions of fact, they are hereby denied.

30. Paragraph 30 states legal conclusions to which no answer is required. To the extent these legal conclusions are deemed to be conclusions of fact, they are hereby denied.

31. Paragraph 31 states legal conclusions to which no answer is required. To the extent these legal conclusions are deemed to be conclusions of fact, they are hereby denied.

32. Paragraph 32 states legal conclusions to which no answer is required. To the extent these legal conclusions are deemed to be conclusions of fact, they are hereby denied.

33. Paragraph 33 states legal conclusions to which no answer is required. To the extent these legal conclusions are deemed to be conclusions of fact, they are hereby denied.

34. Paragraph 34 states legal conclusions to which no answer is required. To the extent these legal conclusions are deemed to be conclusions of fact, they are hereby denied. Any remaining allegations are also denied.

35. Ms. Omundson denies the allegations in paragraph 35, including Plaintiff's characterizations.

36. Ms. Omundson denies the allegations in paragraph 36, including Plaintiff's characterizations.

37. Ms. Omundson is without sufficient information or knowledge to admit or deny allegations regarding the historical actions of reporters and therefore denies the same. Ms. Omundson denies all remaining allegations in paragraph 37, including Plaintiff's characterizations.

38. Ms. Omundson denies the allegations in paragraph 38, including Plaintiff's characterizations.

39. With regard to the allegations of paragraph 39, Ms. Omundson admits generally

that other state court systems have e-file systems, as does the Federal Court system in the United States. Ms. Omundson is without sufficient knowledge or information to either admit or deny the remaining allegations in paragraph 39 and therefore denies the same.

40. With regard to the allegations in paragraph 40, Ms. Omundson is without sufficient information or knowledge to admit or deny and therefor denies the same.

41. With regard to the allegations in paragraph 41, Ms. Omundson admits Plaintiff provided a letter to Christopher Rich in 2016, the content thereof speaks for itself. Ms. Omundson denies any other allegations in paragraph 41, including Plaintiff's characterizations.

42. With regard to the allegations in paragraph 42, Ms. Omundson admits that Christopher Rich provided a letter to the interim Administrative Director of Idaho Courts in 2016, the content thereof speaks for itself. Ms. Omundson denies any other allegations in paragraph 42, including Plaintiff's characterizations.

43. With regard to the allegations in paragraph 43, Ms. Omundson admits that staff of the Idaho Judicial Branch and/or Idaho Courts engaged in conversations with representatives of Plaintiff regarding the issues raised in this case. Ms. Omundson denies any remaining allegations in paragraph 43, including Plaintiff's characterizations.

44. With regard to the allegations in paragraph 44, Ms. Omundson admits Plaintiff, through counsel, made a request for a specialized "Press Review Queue" in 2021 and that Ms. Omundson denied the request because there is no delay in access to newly filed civil complaints. Ms. Omundson denies the remaining allegations in paragraph 44, including Plaintiff's characterizations.

45. Ms. Omundson admits it has not provided a specialized "Press Review Queue" for Plaintiff to have special access to electronically submitted but unfiled civil complaint documents.

Ms. Omundson denies the remaining allegations of paragraph 45, including Plaintiff's characterizations.

46. Paragraph 46 states legal conclusions to which no answer is required. To the extent these legal conclusions are deemed to be conclusions of fact, they are hereby denied.

47. Ms. Omundson incorporates her responses to paragraphs 1-46 of the Complaint as if fully restated herein.

48. Ms. Omundson denies the allegations of paragraph 48, including Plaintiff's characterizations. Paragraph 48 also states legal conclusions to which no answer is required. To the extent these legal conclusions are deemed to be conclusions of fact, they are hereby denied.

49. Ms. Omundson denies the allegations of paragraph 49, including Plaintiff's characterizations. Paragraph 49 also states legal conclusions to which no answer is required. To the extent these legal conclusions are deemed to be conclusions of fact, they are hereby denied.

50. Ms. Omundson denies the allegations of paragraph 50, including Plaintiff's characterizations. Paragraph 50 also states legal conclusions to which no answer is required. To the extent these legal conclusions are deemed to be conclusions of fact, they are hereby denied.

FOURTH DEFENSE

Plaintiff has failed to join a necessary and indispensable party under FRCP 19.

FIFTH DEFENSE

There is no ongoing violation of Plaintiff's qualified First Amendment rights because the Idaho County Court Clerks' offices are already providing timely and appropriate access to newly e-filed civil complaints to the public and Plaintiff. There is no delay in access to newly filed civil complaints because access to the public and Plaintiff is immediate upon filing.

SIXTH DEFENSE

The policies and procedures of Idaho's County Court Clerks' offices (in their respective offices) ensure that newly submitted civil complaint documents are processed and stamped as filed in a timely and efficient manner, where such process is no greater than necessary to serve the legitimate administrative interests of the Idaho courts.

SEVENTH DEFENSE

A state-wide federal injunction requiring Idaho's courts and Clerks' offices to provide pre-processing access to newly submitted civil complaint documents will disrupt the operations of Idaho's Clerks' offices and will cause harm to the legitimate administrative interests of the Idaho courts and the public's interests in the integrity of judicial records and confidence in the orderly operations of the courts.

EIGHTH DEFENSE

The length of delays alleged by Plaintiff in the Complaint is misleading and inaccurate. Idaho's Clerks' offices provide timely access to newly filed civil complaints in each Idaho county.

NINTH DEFENSE

CNS's claim for injunctive relief is moot.

TENTH DEFENSE

CNS's claims are barred by quasi-judicial immunity.

ELEVENTH DEFENSE

CNS's claims are barred by the applicable statute of limitations including, but not limited to, Idaho Code § 5-218.

TWELFTH DEFENSE

CNS's claims are barred by waiver.

THIRTEENTH DEFENSE

CNS's claims are barred to the extent that CNS has not suffered, and will not suffer, irreparable harm or injury.

FOURTEENTH DEFENSE

CNS's claims are barred to the extent that CNS has not suffered any injury in fact from the conduct alleged in the Complaint.

FIFTEENTH DEFENSE

CNS's claims are barred because Ms. Omundson's conduct has not proximately caused any injury, loss or damage alleged by CNS.

SIXTEENTH DEFENSE

CNS's claims are barred to the extent that CNS lacks standing.

SEVENTEENTH DEFENSE

CNS's claims are barred because CNS challenges a lawful regulation of commercial speech.

EIGHTEENTH DEFENSE

CNS's claims are barred because CNS challenges a reasonable time, place, and manner restriction.

NINETEENTH DEFENSE

CNS's claims are barred because there is an overriding interest in processing a complaint before making them publicly available that is essential to preserve higher values and is narrowly tailored to serve that interest.

RESERVATION OF DEFENSES

Ms. Omundson, by virtue of pleading a defense above, does not admit that said defense is an affirmative defense within the meaning of applicable law, and Ms. Omundson does not thereby assume a burden of proof or production not otherwise imposed upon them as a matter of law. In addition, in asserting any of the above defenses, Ms. Omundson does not admit any fault, responsibility, liability or damage but, to the contrary, expressly denies the same. Discovery has yet to conclude, the results of which may disclose the existence of facts supporting further and additional defenses. Ms. Omundson, therefore, reserves the right to seek leave of this Court to amend this Answer as it deems appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, Ms. Omundson demands a trial of not fewer than twelve persons on all issues so triable.

REQUEST FOR ATTORNEY FEES

Ms. Omundson has been required to retain the services of counsel and is entitled to recover her reasonable attorney fees and costs incurred in the defense of this matter pursuant to Federal Rule of Civil Procedure 54, 28 U.S.C. § 1988, and all other applicable laws and agreements allowing for the recovery of costs or attorney fees in this action.

PRAYER FOR RELIEF

Wherefore, Defendant Sara Omundson prays for judgment as follows:

1. That Plaintiff take nothing against Ms. Omundson by way of the Complaint and that the Complaint be dismissed with prejudice.
2. That Ms. Omundson be awarded her costs and reasonable attorney fees incurred in the defense of this action; and

3. For such other and further relief as this Court may deem just and proper.

DATED this 10th day of June, 2022.

DUKE EVETT, PLLC

By /s/Keely E. Duke

Keely E. Duke – Of the Firm

Molly E. Mitchell – Of the Firm

Attorneys for Sara Omundson

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Amber N. Dina

amberdina@givenspursley.com

Katherine A. Keating

katherin.keating@bclplaw

Jonathan G. Fetterly

jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Case No. 1:21-CV-305-DCN

Plaintiff,

vs.

Boise, Idaho
February 18, 2022
9:59 a.m.

SARA OMUNDSON, in her official
capacity As Administrative
Director of Idaho Courts,

Defendant.

TRANSCRIPT OF MOTION HEARING PROCEEDINGS
BEFORE THE HONORABLE DAVID C. NYE
CHIEF UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff:

MR. JONATHAN G. FETTERLY
Bryan Cave Leighton Paisner, LLP
3 Embarcadero Center, 7th Floor
San Francisco, California 94111
and
MS. DEBORA KRISTENSEN GRASHAM
Givens Pursley
P.O. Box 2720
Boise, Idaho 83701

For the Defendant:

MS. KEELY E. DUKE
MS. ANNE HENDERSON
Duke Evett, PLLC
P.O. Box 7387
Boise, Idaho 83707

Court Reporter:

MS. ANNE BOWLINE, RMR, CRR
Anne_Bowline@id.uscourts.gov

*Proceedings recorded by stenography. Transcript produced by
computer-aided transcription.*

I N D E X

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1 (Proceedings commenced at 9:59 a.m., February 18, 2022.)

2 THE LAW CLERK: The Court will now hear the motion
3 hearing in Case Number 1:21-CV-305-DCN, Courthouse News
4 Service versus Omundson.

5 THE COURT: Good morning, Counsel. I'm going to ask
6 each of you, if you would, starting with the plaintiffs, just
7 identify yourself and tell me who's going to argue from your
8 side.

9 MS. GRASHAM: Good morning, Your Honor. It's Deb
10 Grasham from Givens Pursley. I am local counsel, and Jon
11 Fetterly is here as well, and he will be arguing this morning.

12 THE COURT: All right.

13 MR. FETTERLY: Good morning, Your Honor. This is Jon
14 Fetterly. I'll be arguing. Thank you.

15 MS. DUKE: Good morning, Your Honor. Keely Duke and
16 Annie Henderson on behalf of Ms. Omundson, and I will be
17 arguing.

18 THE COURT: Okay. Thank you. I'm also going to just
19 say, because she won't listen to me, Patti's on here, but she
20 has COVID. I can't get her to get off the hearing. That's
21 why I had Bennett call the case. She doesn't have much of a
22 voice right now.

23 All right. We're here today on two motions, a motion
24 to dismiss by the defense and a motion for preliminary
25 injunction by the plaintiffs. I think we ought to take up the

1 motion to dismiss first. So, Ms. Duke, that would be you.

2 You may go ahead.

3 MS. DUKE: Thank you, Your Honor. And may it please
4 the Court.

5 Patti, I'm sorry you're dealing with COVID.
6 Hopefully it all goes just fine.

7 THE COURT: I probably just violated all kinds of
8 federal laws telling you that.

9 MS. DUKE: Unless you're a doctor, I think you're
10 okay. So, Your Honor, thank you very much. Do you mind if I
11 share my screen?

12 THE COURT: No. Go ahead.

13 MS. DUKE: Thank you, sir. Your Honor, first and
14 foremost, we are asking that this Court exercise the doctrine
15 of abstention and abstain from ruling related to this case and
16 dismissing it for state proceedings. Certainly it's well
17 established in the *Quackenbush* case -- which is, quite
18 frankly, similar to this case in that, as I'll discuss in a
19 few minutes, the entire recordkeeping court process for the
20 state of Idaho if CNS gets what it asks this Court to do will
21 have to be changed; and that change will be dictated and
22 mandated by a federal court, not by the Idaho legislature, not
23 by the Idaho Supreme Court.

24 And so while abstention is the exception rather than
25 the rule, federal courts may decline to exercise their

1 jurisdiction in otherwise exceptional circumstances where
2 denying a federal forum would clearly serve an important
3 countervailing interest.

4 We turn next to the *Colorado River Water Conservation*
5 case, a United States Supreme Court case in which it was noted
6 that considerations of wide judicial administration alone may
7 sometimes warrant dismissal of a federal court proceeding.

8 And next we look to the guidelines provided by *Hart*
9 *v. Massanari* in the Ninth Circuit, where the Ninth Circuit has
10 specifically instructed that using the techniques developed at
11 common law, a court confronted with apparent controlling
12 authority must parse the precedent in light of the facts
13 presented and the rule announced. Insofar as there may be
14 factual differences between the current case and the earlier
15 one, the court must determine whether those differences are
16 material to the application of the rule or allow the precedent
17 to be distinguished on a principled basis.

18 That's exactly where we come to here with this
19 *Planet III* and *Planet I* decision. Abstention in this case is
20 appropriate because the requests for relief are sufficiently
21 distinctive from those in the *Planet* case to warrant this
22 Court's independent consideration of whether abstention is
23 appropriate or not. And that's directly within the Ninth
24 Circuit purview of indicating that we need to look at the
25 facts of the case to determine whether its precedent will in

1 fact guide.

2 When you look to this case, CNS demands instantaneous
3 preprocessing access to nonconfidential complaints. This --
4 in order to do that, CNS relies on the time it takes from a
5 complaint being submitted -- which I'll discuss here in a
6 moment -- to actually being filed and then part of the court
7 record. To then attempt to further justify an incredible
8 overexpansion of *Planet III*, CNS then misuses the 24 hours in
9 a day, seven days a week, 365 days a year ability for someone
10 who wants to submit a document for filing to submit that
11 document.

12 So let's look at the distinguishing factors between
13 *Planet I* and this case. First and foremost, in *Planet I*, when
14 the court decided it would abstain, the question of access --
15 so the First Amendment question -- had not yet been decided.
16 In Idaho we already have the benefit of the court's decision.
17 You'll see in *Planet I* here on page 789 one of the important
18 factors that *Planet I* used in choosing to not abstain was that
19 this was a question of first impression and a matter of
20 particular federal concern that removes this case from the
21 realm of sensitive state issues that federal courts should
22 hesitate to address.

23 That's not the plain view that we have here today.
24 We have the answer in *Planet*, and that is that in applying
25 *Press-Enterprise*, *Planet III* later subsequently held that, "We

1 conclude that the press has a qualified right of timely access
2 to newly filed civil nonconfidential complaints that attaches
3 when the complaint is filed."

4 Now, we're going to talk a lot about the "however"
5 later, but I thought it was important to highlight that first
6 distinction for you, Your Honor, that we're not dealing with a
7 case of first impression. We already know what the Ninth
8 Circuit in *Planet III* has said related to access of filed
9 civil complaints.

10 Now, if we turn next to the next significant
11 difference between *Planet I* and this case, *Planet I* California
12 is not what we do here in Idaho. In the *Planet I* case, the
13 Ventura County clerk failed to raise the very issue that we've
14 raised for you, Your Honor, at the Ninth Circuit level, and
15 that is this whole submitted versus filed issue.

16 And let me show you. As we've submitted, submitted
17 versus filed in Idaho is very different. If you look here at
18 the first bubble, submission through public side of File &
19 Serve. This is the Tyler side; this is not the State of
20 Idaho's case management system. So this is different than
21 when you were an Idaho state district judge, Your Honor. The
22 system has changed a bit.

23 So the Tyler side of things is File & Serve, not part
24 of the court record. The complaint is then received on the
25 private side of File & Serve -- again, maintained and run by

1 Tyler -- to the ministerial clerk review and private side of
2 File & Serve. And once that ministerial review is done, then
3 you hop to this blue bubble, which says "official court
4 record." None of this was addressed before the *Planet III*
5 court.

6 And this is where you need to get into the actual
7 rules that the State of Idaho uses. Electronic filing in
8 Idaho is not a submitted document. If you look at Rule 11
9 that the Idaho Supreme Court has promulgated and adopted and
10 has used by our 44 county clerks across the state of Idaho,
11 electronic filing means a document is filed when the document
12 has been electronically submitted.

13 So that's the first part of what CNS is trying to do.
14 CNS is trying to have you say, "Oh, I'm a federal judge. I'm
15 going to tell Idaho, 'Nope, electronic filing needs to end
16 there.'" Delete part 2 of this definition that the Idaho
17 Supreme Court has come up with, because that part 2 is exactly
18 the difference between our case and *Planet III*. And that is
19 the submission has been acknowledged and the document accepted
20 for filing. None of this was brought to the *Planet III* court
21 because the Ventura County clerk waived that argument and
22 failed to raise it.

23 Second, of course, Rule 11 in Idaho was certainly not
24 addressed, because every state has their own procedure and
25 process. In Idaho it's the -- it's the courts that define the

1 rules related to filings. It is not the Idaho legislature.

2 So if you turn next, then, this is -- this is where I
3 think things get a little hazy in CNS's briefing and in their
4 complaint. You'll see that to emphasize to you, Your Honor,
5 they will cite the Ninth Circuit decision in *Planet III*, but
6 then they intertwine a District Court decision that was never
7 ruled upon by the District -- by the Circuit Court.

8 And that's a very important distinction here, because
9 the entire crux of their argument, trying to have you exercise
10 federal power over a state court and its system related to how
11 it handles its filings. They tried to jump to a conclusion
12 that is not anywhere contained within *Planet III's* Circuit
13 Court decision that e-filed complaints are exactly the same
14 thing. And therefore, because the District Court ruled that
15 regardless of whether courts use paper filing or e-filing
16 systems, that submission is effectively when this should
17 occur.

18 That's not a Ninth Circuit decision. That is from
19 the district judge, and the district judge notes there that
20 Ventura County abandoned its objection to this language by not
21 raising it on appeal, and this Court cannot now revisit its
22 already final determination on the issue. That is by no means
23 the Ninth Circuit saying that this court said a submitted
24 e-filing equals a filing and, therefore, has the
25 constitutional protections that *Planet III* provided.

1 THE COURT: Ms. Duke, if I can interrupt for just a
2 minute.

3 MS. DUKE: Sure, Your Honor.

4 THE COURT: Tell me how it works if a plaintiff's
5 lawyer on Friday afternoon files a complaint -- well, submits
6 a complaint under your argument, and that's the last day of
7 the statute of limitations, but the case isn't actually filed
8 until Monday when it's reviewed. Have they lost their statute
9 of limitations argument?

10 MS. DUKE: No. I don't believe anything in the rules
11 provides that, Your Honor.

12 THE COURT: So it is filed when it's submitted?

13 MS. DUKE: Well, it's been provided to the court, and
14 we have the specific provision that indicates that it's
15 effectively accepted with a three-day window for corrections
16 to be made.

17 THE COURT: And then that's a Idaho Supreme Court --

18 MS. DUKE: The correction does not impact --

19 THE COURT: What rule is that?

20 MS. DUKE: Well, let me -- I will get it to Your
21 Honor --

22 THE COURT: Is it 12?

23 MS. DUKE: -- in one moment. I think it is 12, but
24 let me -- let me get that to Your Honor.

25 THE COURT: I guess my real question is, is that so

1 for some purposes, the complaint is deemed filed when it is
2 submitted to the court? But for other purposes, including
3 today's argument, you're saying it's not filed until it's been
4 reviewed and accepted?

5 MS. DUKE: Well, and that's why I think the rules
6 have addressed that issue, and that is mistakes happen. And
7 in the old days of filing with -- you know, where we had a
8 runner run over -- and that's how I started my legal career.
9 I was a runner who would run to the courthouse. I would take
10 the documents, and they would stamp them. Or my heart would
11 skip a beat, and the clerk would say, "Sorry, you're missing
12 this," and I would have to sprint back to the office to have
13 it filed.

14 And it is Rule 12 that you're referencing. And what
15 it -- what it envisions is that we get -- in the electronic
16 world, given that you're able to file these in the middle of
17 the night, on Christmas Day, you know, whenever it is, we
18 don't want a litigant to be prejudiced if there's some
19 ministerial issue with their -- with their filing, and
20 therefore we provide a grace period of three days for a
21 correction to be made so that it can revert back to the
22 original date of submission.

23 And that's the practical impact of -- it's not Keely
24 walking it up to the clerk's office and having my heart skip a
25 beat and realize that we didn't have a signature or a filing

1 fee and, therefore, at 4:58 having to leave the courthouse,
2 run back, and not make my time. That's because the Idaho
3 Supreme Court has recognized, "We need to have you litigants
4 have an opportunity on a ministerial issue to correct that so
5 you are not prejudiced."

6 THE COURT: Okay.

7 MS. DUKE: So next you look to *Planet*, and you look
8 at the process that was used. And this is very different.
9 The initial seven-step process was not that different,
10 although, please remember, in *Planet* -- again, California, not
11 Idaho -- this was paper files. We're dealing with electronic
12 files. Nothing in *Planet III* dealt with this is the rule for
13 electronic files.

14 Items 8 and 9 are the real kicker for *Planet I*, and
15 that is the supervisor, once -- it was already approved by a
16 clerk. So in Idaho, once that happens, it's immediately
17 transferred from the Tyler system to Idaho's court management
18 system, and that document immediately becomes available to the
19 judge and to the public at the same time. The judge does not
20 have first access. It all becomes available for the first
21 time to the judge and the public at the same time.

22 And as Your Honor may be aware or remember from your
23 days on the state court bench, "press" is not defined in Idaho
24 like it is in California. There is no credentialed press in
25 Idaho. Press is the public. That is the way it's been

1 handled, and it's never been defined differently.

2 So what's very different between *Planet I* and Idaho
3 is that the supervisor, after it was already approved, would
4 review, and then maybe it was put into a media event. That's
5 not the case here. Once it's submitted and goes through its
6 administrative checks, it is then deemed filed, transferred
7 from the Tyler system to the court's file management system,
8 and then at the same time becomes immediately available to the
9 public and to the judge.

10 If you look to -- I'll move forward because I know
11 I'm limited on time. This is the case, *State v. Salisbury*
12 that indicates that the press or media is defined differently.
13 Unlike Idaho, Idaho does not have -- or unlike California,
14 Idaho does not have a press shield in which the press or the
15 media is defined differently than the general public.

16 Obviously, we can talk about this during the
17 preliminary injunction phase, but, Your Honor, when you look
18 to the rules, you look to Idaho Rule 32, which provides, you
19 know, the court's indication of how they're going to control
20 access to court records -- and it's recognized in the Public
21 Records Act, which the Idaho legislature enacted. It accepted
22 the court records and said, "You courts, you're in charge of
23 your records."

24 So what did we do? We promulgated Idaho Rule 32.
25 The Supreme Court then also built in a response to requests.

1 So within three working days from receipt of a request, the
2 custodian shall disclose the records requested. Now, notably,
3 we can do far better than that, which is what we do with our
4 filed complaints. Filed complaints in the state of Idaho are
5 immediately available to the public by CNS and anyone who
6 wants to look and at the same time to the judge. So -- but it
7 needs to happen within those three working days.

8 The custodians of the records are the clerks. That's
9 well lined out. And the official court record for a case file
10 maintained in accordance with these rules is the electronic
11 case file maintained by the court as well as any paper
12 filings. So again, these are the accepted filings, not that,
13 hey, I'm a runner standing at the clerk, handing you my
14 document. It's once it has had that ministerial review done.

15 Now, notably, when we talk about abstention, Your
16 Honor, something that is very different as well is the impact.
17 The *Planet I* case concluded that this is not a big policy
18 changing, policy sweeping decision if we, as the Ninth
19 Circuit, determine that we're going to evaluate whether or not
20 the Ventura County Superior Court was violating the First
21 Amendment. It's noted there's little risk that the federal
22 courts would need to examine the administration of the
23 substantial number of individual cases to provide the
24 requested relief.

25 Very different than this case, where we have the

1 entire Supreme Court process, where the Idaho legislature has
2 indicated, "You courts decide what you're going to do with
3 your records," and the very rules promulgated by the Idaho
4 Supreme Court to do so. It's not this ministerial interest
5 where this is not a challenging thing for Ventura County
6 Superior Court to address and deal with.

7 And, Your Honor, I do want to reserve a couple
8 minutes for being able to rebut the plaintiffs. But the
9 biggest issue here, Your Honor, is, you know, you're going to
10 hear a lot from Mr. Fetterly of *Planet I*, *Planet I*, they
11 abstained. Well, you have a Ninth Circuit precedent that says
12 when you have a very factually distinguishable case, the right
13 to abstention is something that this Court -- or the doctrine
14 of abstention is something that this Court could look to
15 exercise. And we're asking that this Court do so based upon
16 the fact that the issue is not ripe as to what really is going
17 to be protected when it comes to a filing by a court related
18 to a complaint. That's been answered. That wasn't answered
19 in *Planet I*.

20 So, Your Honor, unless you have some questions on
21 that point, I would like to reserve a couple minutes.

22 THE COURT: I do not have any questions, and you're
23 welcome to reserve some time.

24 MS. DUKE: Thank you, Your Honor.

25 THE COURT: Thank you.

1 Mr. Fetterly.

2 MR. FETTERLY: Thank you, Your Honor, and good
3 morning.

4 THE COURT: Good morning.

5 MR. FETTERLY: So we've heard a lot there about
6 abstention. However, counsel's argument really, in my view,
7 goes quite far beyond abstention and really starts to go into
8 what should be the second part of the *Press-Enterprise II*
9 test, which is the defendant's burden to justify her policy
10 and practice. So we'll get to that in a minute, but I'll
11 tackle the abstention piece first. And then I will follow
12 that by talking a little bit about what Courthouse News's
13 claim actually is and how it should actually be analyzed by
14 this Court under the *Press-Enterprise II* test, which is a
15 factual inquiry which really isn't -- I believe it does not
16 implicate abstention.

17 But counsel's correct. You are going to hear me talk
18 about the Ninth Circuit and *Planet*, because the Ninth Circuit
19 has spoken. It has addressed this issue. The -- it rejected
20 an abstention challenge in the *Planet* case in *Planet I*. And
21 then in *Planet III* the Ninth Circuit, in footnote 4, expressly
22 disagreed with the decision in *Courthouse News Service v.*
23 *Brown*, which counsel cites in her papers. She doesn't mention
24 it here.

25 But it really goes to this idea that there's some

1 principled basis in, you know, comity that would allow this
2 Court to abstain from exercising its jurisdiction over a First
3 Amendment claim. And the Ninth Circuit did agree with that,
4 citing back to its original opinion. So the Ninth Circuit has
5 addressed this issue and all of these grounds on which counsel
6 attempts to distinguish *Planet*. Again, we'll talk about them
7 in connection with the *Press-Enterprise II* test and
8 specifically defendant's burden under the second part of that
9 test.

10 But none of those are real material distinctions
11 here, because this case involves the same claim that was
12 asserted in the *Planet* case, and Courthouse News here is
13 seeking the same relief that was sought in the *Planet* case and
14 which was affirmed by the Ninth Circuit in *Planet III*. So we
15 have got a pretty clear statement from the Ninth Circuit on
16 abstention.

17 Now, if we were to just take a bigger step back and
18 say what would the Supreme Court say about this, because we
19 already have counsel talking about *Quackenbush* and other
20 cases. She cites a number of older cases that predate the
21 more recent and controlling Supreme Court authority that has
22 made it very clear that abstention should only be used in the
23 most exceptional circumstances. And these most recent Supreme
24 Court cases have significantly limited the scope and reach of
25 abstention, and specifically the *New Orleans Public Service*

1 *Inc.*, and the *Sprint Communications* cases. Both of those are
2 cited in our opposition to the motion to dismiss, and both of
3 those cases significantly restrict the reach of *Younger*
4 abstention and its progeny, which is really what counsel is
5 asking for, the application of *Younger* and its progeny under
6 *O'Shea*.

7 So if we read *Sprint Communications* and the three
8 very narrow and limited categories in which the Court can
9 potentially abstain, they simply don't apply here. And the
10 Court doesn't need to take my word for it. There are --
11 there's a growing list of Federal District Court cases that
12 have considered this exact issue. It's the same claim brought
13 by Courthouse News, the same relief sought by Courthouse News.
14 And some of these cases even involve the same Tyler File &
15 Serve system used by the Idaho courts, and these courts have
16 considered and rejected the same argument counsel makes about
17 the distinction between submission and acceptance. You know,
18 the law is pretty clear, and there's a growing line of
19 authority that has considered *Planet* and this new e-filing
20 environment and agreed with it when rejecting abstention
21 challenges.

22 So to quickly walk through the line of cases so that
23 the Court has them -- and admittedly at least one of them is
24 not in our papers, because some of this is very fresh -- we
25 first have the Fourth Circuit agreeing with Courthouse News.

1 Admittedly, the Fourth Circuit in the *Schaefer* case was also a
2 paper case, so, you know, it doesn't reach the e-filing issue.
3 But again, same claim, same relief sought.

4 *Courthouse News v. Tingling*, this is the Southern
5 District of New York, and we attached a transcript as
6 Exhibit 17 to the Girdner declaration in support of the
7 preliminary injunction motion. And there Judge Ramos rejected
8 an abstention challenge in a case that involved e-filing.
9 That was the e-filing system in New York. So some of the same
10 arguments you've heard, the grounds upon which the defendant
11 is trying to distinguish *Planet*, didn't hold up when Judge
12 Ramos in *Tingling* rejected the abstention challenge.

13 Most recently now we have three cases in District
14 Courts that are perhaps the most persuasive because they
15 involve the same Tyler File & Serve system. So the attempts
16 to distinguish *Planet* simply fall away if we look to these
17 other District Court cases that have rejected abstention.

18 We have the *Courthouse News Service v. Gabel* case in
19 Vermont, and we attached that ruling in our supplemental
20 authority. That's Docket 12 [sic] in this court, and it's
21 also a Westlaw cite, which is 2021 WL 5416650. Judge Reiss
22 considered the abstention argument, many of the same things
23 Your Honor just heard, and she rejected abstention and looked
24 at the merits of the case when applying the *Press-Enterprise*
25 *II* test.

1 In New Mexico, same result. We have Judge
2 Browning -- and we also cite this in our reply brief in
3 support of the motion for preliminary injunction. And again,
4 these were issued after the briefing closed on the motion to
5 dismiss. But the Westlaw cite there is 2021 WL 4710644.
6 Judge Browning also considered the abstention issue freshly
7 unconstrained by the Ninth Circuit, but he agreed with it, and
8 he rejected abstention in a case that involved the same Tyler
9 system and all of the grounds upon which counsel just tried to
10 distinguish *Planet*.

11 And then we also have *CNS v. Price*. This case does
12 not appear in our papers, admittedly. It's another pretty new
13 case. At the end of November, November 29, Magistrate Judge
14 Hightower in the Western District of Texas, she issued a
15 report and recommendation rejecting an abstention challenge on
16 the same grounds, considering all of the relevant federal
17 authorities. And Judge Yeakel in the Western District of
18 Texas, he agreed. And the Magistrate Judge in -- his report
19 and recommendation is 2021 WL 5567748.

20 So when you look at the body of law, we have a pretty
21 clear trend against abstention. And these are cases that are
22 not in the Ninth Circuit. So here, Your Honor, in the Ninth
23 Circuit I think the case should be even clearer and stronger.
24 But where we do have two cases that admittedly have abstained,
25 they're clearly not going to be persuasive in the Ninth

1 Circuit. The one Seventh Circuit opinion, *Courthouse News*
2 *Service v. Brown*, I've discussed that. The Ninth Circuit
3 disagreed with it.

4 The only other case that has abstained was the *Gilmer*
5 case in the Eastern District of Missouri, and in that case
6 Judge Autrey framed the issue as a choice between the Seventh
7 Circuit decision in *Brown* and the Ninth Circuit decision in
8 *Planet*. And he chose to follow the Seventh Circuit. Well, we
9 believe this Court should, naturally, follow the Ninth.

10 So again, the body of abstention law I think is quite
11 clear and really brings us back to this point that counsel
12 keeps making about, well, somehow *Planet* is distinguishable.
13 And quite frankly, I refer the Court to the other District
14 Court cases that have considered this issue in the e-filing
15 context with Tyler e-filing services and have found that
16 abstention was inappropriate and have agreed with the Ninth
17 Circuit on that point.

18 Now, I do want to address some of the grounds on
19 which counsel tries to distinguish *Planet* here, because,
20 again, I don't think those necessarily support an abstention
21 argument. But in her papers at least she frames them as
22 grounds upon which Courthouse News is -- has failed to state a
23 claim. That's the argument in the papers. And she begins the
24 factual distinction discussion by talking about a single line
25 in the *Planet III* opinion where the Ninth Circuit says, you

1 know, the First Amendment does not demand immediate
2 preprocessing access to newly filed civil clients -- or excuse
3 me -- new civil complaints. E-filing admittedly was not in
4 *Planet*.

5 But the defendant's focus on that statement, however,
6 completely misses the mark for a claim of abstention or
7 whichever other purpose she's trying to advance that line,
8 because that is not the claim here, and that is not the test
9 that this Court must apply to that claim. So what, then, is
10 the claim, and what is the test? I'm going to spend the rest
11 of my time talking about this, because it really lays the
12 foundation for both motions and how this Court needs to apply
13 the *Press-Enterprise II* test.

14 So the claim here is a 42 U.S.C. Section 1983 claim
15 based on delays in access to new e-filings of complaints filed
16 with the Idaho State District Courts. And we allege that the
17 delays at issue are the result of the Idaho courts' practice
18 of withholding access to new civil complaints until after
19 court staff review them. We just heard counsel talk about
20 that. I don't think that's really in dispute here. There's
21 admittedly a delay, a lapse of time between when the court
22 receives the complaint and when court staff get around to
23 viewing it, conducting the ministerial review, and then
24 accepting it. And that delay, that lapse of time, that's the
25 delay at issue.

1 And the Ninth Circuit in *Planet III* has given us the
2 test that we must apply to those delays to determine whether
3 they are in fact constitutional under the First Amendment or
4 whether the policy and practice that's causing those delays
5 can withstand constitutional scrutiny.

6 And the test that the Ninth Circuit announced in
7 *Planet III* comes from the U.S. Supreme Court case
8 *Press-Enterprise Company v. Superior Court*, or
9 *Press-Enterprise II*. Or if I say *Press-Enterprise*, I'm
10 referring to *Press-Enterprise II*. The first part of that test
11 is for the Court to determine whether experience and logic
12 create an entitlement under the First Amendment to a
13 particular document or process. The Ninth Circuit has
14 addressed that issue. That's -- that's *Planet III*. The Ninth
15 Circuit made it very clear. There is a First Amendment right
16 of access to new civil complaints that attaches when they are
17 received by the court.

18 Now, counsel argues that the right of access does not
19 attach until after Idaho courts accept and process the
20 complaint, which is the way that the Idaho courts deem them,
21 quote, filed for administrative recordkeeping purposes.
22 However, this argument ignores the plain language in
23 *Planet III*, which uses the terms "filed" and "received"
24 interchangeably. *Planet III* agrees with the District Court
25 that the right of access attaches upon receipt, and the Ninth

1 Circuit affirmed that ruling. And it also ignores the
2 plain -- the definition of "filed" in the judicial context,
3 which means submitted to or received by the court.

4 Now, the parties have thoroughly briefed this issue,
5 and I don't want to repeat all of what is in our papers. I
6 trust the Court has enough paper in front of it. But I will,
7 however, point out that Magistrate Judge You's recent report
8 and recommendation in the Courthouse News v. Cozine case,
9 which is currently pending in the District of Oregon,
10 addresses this issue directly. And we submitted that earlier
11 this week as a notice of supplemental authority. I believe
12 that's Docket Number 32. And this is very fresh. Magistrate
13 Judge You just issued this report and recommendation on Monday
14 of this week.

15 So in the Cozine case, we have a statewide court
16 administrator, just like Defendant Omundson. The Oregon
17 courts use File & Serve, just like Idaho. That's the Tyler
18 product. Counsel referenced Idaho Rule 11. Well, Oregon has
19 Trial Court Rule 20.060. That's basically the same thing.
20 And Magistrate Judge You walked through this entire argument
21 about when the right attaches. Does it attach upon receipt?
22 Does it attach upon acceptance?

23 And after thoroughly analyzing the *Planet* cases and
24 after thoroughly considering all of the arguments counsel just
25 made, she rejected the argument that the right of access

1 attaches upon acceptance, which would be after the delays at
2 issue have already occurred. So I would just point the Court
3 to that report and recommendation. It's currently going to
4 Judge Simon in the District of Oregon. But just as this Court
5 is free to make its own decision, I think Magistrate Judge
6 You's report and recommendation lays out a pretty clear and
7 convincing roadmap and path for this Court we would ask that
8 you follow.

9 So with the Ninth Circuit then, having already
10 applied the first part of the *Press-Enterprise II* test and
11 having already established that there's a qualified First
12 Amendment right of access to civil complaints that attaches
13 when they are received by the court, we then turn to the
14 second part of the *Press-Enterprise II* test. And that's, I
15 think, really where most of what counsel has argued should be
16 addressed, because what counsel is saying is we have all of
17 these processes in Oregon and they're different. Well, what
18 she's saying is these are all the processes that we need, and,
19 well, under constitutional scrutiny they have to be examined
20 under the second part of the test.

21 And it is a factual inquiry that asks whether the
22 defendant has met its burden of justifying the delays in
23 access under constitutional scrutiny. And that burden is
24 twofold. As the *Planet III* opinion explains, the defendant
25 must first demonstrate that a compelling governmental interest

1 would be impaired by providing more immediate access; and
2 second, that no readily available alternatives exist to
3 adequately address that governmental interest. And that's
4 what the Ninth Circuit calls rigorous scrutiny. So again, it
5 is defendant's burden of justifying the delays in access
6 alleged in the complaint under rigorous scrutiny.

7 So again, we're under a Rule 12 motion for this part
8 of our morning, and the question then is, has Courthouse News
9 stated a claim? And the short answer is yes. We've alleged
10 delays in access. We've alleged defendant cannot meet her
11 burden of justifying the delays in access under rigorous
12 scrutiny. We also allege that defendant is -- in her capacity
13 as a state court administrator is responsible for the
14 statewide e-filing system in Idaho and public access to
15 records through those systems and thus responsible for the
16 delays at issue. That's paragraphs 12 and 13 of the
17 complaint.

18 So the Court must accept these allegations as true at
19 this stage. And if, as alleged, defendant cannot satisfy her
20 burden of justifying the access delays at issue under the
21 second part of the *Press-Enterprise II* test, or rigorous
22 scrutiny, then the policy or practice causing those delays
23 violates the constitution. And that is Courthouse News's
24 claim, and that is the test this Court must apply to evaluate
25 it.

1 And the complaint here, again, it seeks the same --
2 it asserts the same claim asserted in *Planet*. It seeks the
3 same relief that was affirmed in *Planet*, and that is a
4 declaration that defendant's practice of withholding access
5 until after clerical processing violates the First Amendment
6 and a permanent injunction prohibiting that -- prohibiting
7 that practice.

8 So that right there should be the end of the analysis
9 on the state of claim. And again, on the abstention issue,
10 everything the Court has heard about the reasons why *Planet* is
11 supposedly different, I just refer back to the many District
12 Court cases that have found those arguments unpersuasive and
13 rejected them.

14 I'll conclude my comments here, Your Honor, with one
15 final point. And I think it's significant, because we've
16 already heard counsel begin part of her argument with this
17 idea that Courthouse News is demanding immediate access or
18 that, you know, the First Amendment does not demand immediate
19 preprocessing access. And as I just discussed, that is not
20 the claim, and that is not the test, and quite simply, it
21 doesn't support a motion to dismiss.

22 I want to address it because I think we're going to
23 hear more of that today, because we see that throughout the
24 papers. And that sentence from the Ninth Circuit in *Planet* is
25 significant to the extent it simply underscores the qualified

1 nature of the right of access. The First Amendment right of
2 access to new civil complaints is qualified because defendant
3 has the opportunity to try to justify the delays and access
4 under rigorous scrutiny.

5 However, rather than address that burden under the
6 second part of the test, which we did not hear about during
7 counsel's presentation. And to be candid, she can't address
8 it at this stage because it's a fact-intensive inquiry that's
9 beyond the scope of a pleading motion. So instead of
10 addressing that test, defendant instead intends to avoid
11 constitutional scrutiny altogether by reframing and
12 mischaracterizing Courthouse News's claim as one demanding
13 immediate access. But again, that's not the test, and that's
14 not the claim.

15 So, you know, I'd point the Court to the *Planet II*
16 decision, because it's pretty instructive on this point.
17 Defendant's attempt to recast Courthouse News's claim as one
18 demanding immediate access so she can avoid rigorous scrutiny,
19 it's reminiscent of the motion to dismiss that the defendant
20 in *Planet* filed that led to the *Planet II* decision. In that
21 case the defendant moved to dismiss Courthouse News's
22 complaint on the ground that the First Amendment does not
23 demand same-day access to civil complaints. It didn't say
24 immediate; it says same day. That was their shorthand in the
25 *Planet* case.

1 And the District Court took the bait, and it granted
2 the motion to dismiss. Well, Courthouse News appealed. In
3 *Planet II* -- and in *Planet II* the Ninth Circuit reversed that
4 dismissal, finding that the District Court erred by narrowing
5 the legal question to one divorced from the proper legal
6 framework. That's the *Press-Enterprise II* that we discussed,
7 and we'll discuss more later today.

8 So whenever we hear defendant say Courthouse News is
9 seeking immediate access or that Courthouse News has not
10 stated a claim because the First Amendment does not demand
11 immediate access, that should be a cue that Defendant
12 Omundson, just like the *Planet* defendant, is attempting to
13 sidestep rigorous scrutiny by incorrectly reframing and
14 narrowing the legal question to one that is divorced from the
15 applicable *Press-Enterprise II* test.

16 So for the purposes of this motion to dismiss, Your
17 Honor, I think if we simply follow the *Press-Enterprise II*
18 test as set forth in *Planet III* and if we follow *Planet* and
19 the growing list of other federal court cases that have
20 rejected abstention, it's pretty clear that Courthouse News
21 has in fact stated a claim for relief, because we've alleged
22 delays in access to new civil complaints, and we have alleged
23 that defendant cannot meet her burden under the applicable
24 *Press-Enterprise II* test.

25 So I'll stop there. And if Your Honor has any

1 questions, I'll be happy to answer them.

2 THE COURT: I do not have any questions. Thank you.

3 Ms. Duke, you have about five minutes for rebuttal.

4 MS. DUKE: Thank you, Your Honor. So first and
5 foremost, let's deal with the first allegation. This is a
6 very different proceeding than California. Mr. Fetterly would
7 like to have this be California, not Idaho. And fortunately,
8 that's not the case here for many reasons. But under the
9 Idaho constitution, oversight of the judicial branch falls to
10 the Idaho Supreme Court. It's Article V of our constitution.
11 That power includes the inherent power to manage judicial
12 records, which the Idaho Supreme Court has done, and the
13 legislature has authorized it to do or directed it to do under
14 Idaho Code Section 74-104, with the Idaho Supreme Court doing
15 so in its rules that we've gone through with you.

16 In this case the rules that have actually been
17 challenged by CNS's request for immediate access or press
18 review are the Idaho Supreme Court rules. These are not, like
19 they were in California, some clerk policy, some local
20 procedure. These are rules that the Idaho Supreme Court in
21 its constitutionally granted power enacted. As we noted in
22 our opening filing on the motion to dismiss, Ms. Omundson does
23 not have the independent power to or the authority to enact or
24 modify those rules. It is the Idaho Supreme Court that must.
25 That's point one.

1 Point two, Your Honor, if you actually look at the
2 complaint, I truly do not understand how CNS can argue that
3 they're not looking for immediate access. They don't use that
4 word, but if you look at paragraph 2 of their complaint, if
5 you look at paragraph 3 of their complaint, if you look at
6 paragraph 32 of their complaint, they are telling you, Your
7 Honor, that to do your job, to federally tell the State of
8 Idaho's court system how to handle its documents. They're
9 saying you go get a press review queue. And we'll talk about
10 that in the preliminary injunction.

11 What that means and what that all means in
12 paragraph 3 -- and they say it right there -- is that if you
13 install it, CNS is going to get the complaints at the very
14 same time the court does. So there's two issues with that.
15 One, whether they say instantaneous or not, that's exactly
16 what that means, is that the press review queue would provide
17 CNS with instantaneous access.

18 You then look to paragraph 32, and this is where they
19 get cute and they try to rely on a district judge whose
20 opinion was not challenged by the Ventura County court clerk,
21 which is, what does it really mean to be filed? What does it
22 mean to be processed or not? And what they're trying to do is
23 have the courts across the country -- and it is stunning when
24 you read these decisions, Your Honor. And I look at them, and
25 I highly encourage you to read through *Planet III* again,

1 because when you read through *Planet III*, it talks about
2 receipt twice. And that's just in the context of talking
3 about the filings. Look at every single time that it talks
4 about filed, when it talks about judicial proceedings, all of
5 those things. In the state of California, it's not defined
6 like it is in the state of Idaho. The Idaho Supreme Court has
7 exercised its authority to say something is deemed filed when
8 it has been approved for filing.

9 Now, the other point that I'll make, Your Honor, with
10 respect to our motion to dismiss for failure to state a claim
11 is when you listen to the arguments by CNS -- I'll just go
12 here -- they essentially -- you have to ignore number two.
13 You ignore the second point. The Ninth Circuit has said that
14 you're -- the public's interest is going to be weighed with
15 the state's administrative interest in the fair and orderly
16 processing of the filing.

17 In the complaint I just showed you and in the very
18 arguments that Mr. Fetterly's going to make on the preliminary
19 injunction, take that and put a big red X through it, because
20 they are demanding that you enjoin Idaho from not providing
21 immediate access to submitted complaints before a clerk can
22 ever touch them. That's exactly what they're doing.

23 And if we look at Judge Smith in his concurrence,
24 obviously a much beloved jurist from our state who hits the
25 nail on the head in his concurrence. Timeliness and news

1 worthiness are not the focus of the First Amendment analysis.
2 Rather, the First Amendment analysis focuses on the
3 significant government interest and whether the restriction is
4 narrowly tailored to meet that interest. Absent either an
5 unreasonable burden on the right of access or the access
6 restrictions that also operate as limitations on publishing
7 information previously obtained, ample alternatives for
8 communication are left open.

9 Under CNS's claim, which is not supported by
10 *Planet III*, you would not do the weighing of the balances.
11 *Planet III* -- and again, I highly encourage the Court and your
12 staff to read back through *Planet III* after this argument to
13 really see what it says about the importance that a document
14 be filed and then being provided to the public and press. And
15 in the state of Idaho, that instantaneously happens -- even
16 though it's not required to instantaneously happen, that
17 instantaneously happens once that clerk exercises number two
18 here, that CNS wants to ignore. Once that clerk does a fair
19 and orderly processing of the filing, it is instantaneous
20 access.

21 That is why we're asking this Court to abstain,
22 because the Ninth Circuit itself has said when you can
23 significantly factually distinguish a case from its precedent,
24 then you do not need to follow that precedent. And by no
25 means did *Planet I* address this very issue.

1 So, Your Honor, we request that the motion be
2 dismissed on two grounds: First, that the Court abstain; and
3 second, that CNS has failed to state a claim. *Planet III* does
4 not get CNS to the words of its complaint that it, itself,
5 chose to author and how they included them in the state of
6 Idaho complaint, where they are effectively demanding if the
7 clerk gets it, so does the public. And that would ignore the
8 very bounds and tests that *Planet III* itself indicated in the
9 Ninth Circuit needs to be followed. It ignores the fair and
10 orderly processing of filing.

11 THE COURT: Ms. Duke, I do have one question for you,
12 and it's kind of a step back, overall question.

13 MS. DUKE: Sure.

14 THE COURT: If the -- if these are Idaho Supreme
15 Court rules and not some clerk's policy, as you said, and if
16 the Idaho constitution authorizes the Supreme Court to make
17 these rules, then who oversees the constitutionality of the
18 rules? We can't let the Idaho Supreme Court review their own
19 rules, can we, for constitutionality?

20 MS. DUKE: Why not? I mean, that's -- that's the
21 purview of what they're able to do.

22 THE COURT: Well, I'm having a hard time with that.
23 But I can guarantee you that my staff and I will read all of
24 the *Planet* cases again, and we'll set out the decision when we
25 get to it.

1 Let's turn to the preliminary injunction, and,
2 Mr. Fetterly, that's your motion. You can go first on it.

3 MR. FETTERLY: Thank you, Your Honor. I'll -- for my
4 presentation I will focus on the tests that this Court must
5 apply when ruling on the motion, starting briefly with the
6 test for evaluating preliminary injunctions followed by, once
7 again, the test this Court must apply to Courthouse News's
8 claim, and that is the *Press-Enterprise II* test. And I'll
9 conclude by discussing how we apply the second part of that
10 *Press-Enterprise II* test, which is the fact-intensive inquiry
11 that looks at whether the defendant has met her burden under
12 rigorous scrutiny. We just heard counsel say in connection
13 with the other motion that the Court should disregard that,
14 but that is the test. It's the Ninth Circuit test in which
15 the Ninth Circuit is applying the Supreme Court's test in
16 *Press-Enterprise*.

17 So let me first start with the preliminary injunction
18 test, and only very briefly. You know, the factors this Court
19 must consider when evaluating preliminary injunctions are set
20 forth in the Supreme Court case *Winter v. Natural Resources*
21 *Defense Council*. Now, because this is a First Amendment case,
22 I will focus my argument on the likelihood of success element,
23 because, you know, the loss of a First Amendment freedom even
24 for minimal periods of time constitutes irreparable harm as a
25 matter of law. And the balance of equities weighs in favor of

1 protecting First Amendment rights. That's pretty black-letter
2 law we've cited in our papers.

3 So focusing on the likelihood of success element, we
4 have to determine whether Courthouse News has established a
5 likelihood of success on the merits of its claim. And to do
6 so we look again to the *Press-Enterprise II* test as applied by
7 the Ninth Circuit in *Planet III*. And once again, this is a
8 two-part test. The first part considers whether there's a
9 First Amendment right of access to documents or proceedings
10 and, relatedly, when it attaches. And the second part is the
11 fact-intensive inquiry that asks whether the defendant has
12 carried her burden of justifying the access delays under
13 rigorous scrutiny.

14 So as to the first part, I'll be pretty brief because
15 we just discussed it in connection with the other motion. I
16 will note that the District Court ruling in *Planet*, where the
17 amended judgment speaks to e-filing, well, yes, that was not
18 part of the judgment that was affirmed by the Ninth Circuit,
19 and I concede that e-filing was not before the Ninth Circuit.

20 But it does not change the fact that the right of
21 access attaches upon receipt, and the Ninth Circuit precedent
22 in *Planet III* makes that quite clear. The underlying District
23 Court order that was affirmed by *Planet III* makes that quite
24 clear, and the growing list of federal court cases that I've
25 cited and already discussed here this morning also make that

1 quite clear. And I think the Court need not look further than
2 Magistrate Judge You's findings and recommendations in the
3 Cozine case that issued just earlier this week, in which she
4 thoroughly analyzed and rejected the same arguments counsel
5 just made in a case that also involves a statewide
6 administrator and also involves the same Tyler File & Serve
7 system.

8 So again, with the first part of this
9 *Press-Enterprise II* test already established by *Planet III* and
10 the growing list of federal authorities that have applied it,
11 we turn to the second part of the test to analyze the delays
12 and to determine whether Courthouse News has shown a
13 likelihood of success on the merits.

14 Now, before we turn to that second part of the test
15 and apply it, I want to briefly discuss the actual delays
16 themselves, because they form the basis of the claim. And as
17 we discussed earlier in connection with the motion to dismiss,
18 the delays are the lapse of time between when the Idaho courts
19 receive newly filed complaints and when they make them
20 available to the press and public.

21 And defendant acknowledges in her papers that newly
22 filed complaints, once received by the court, they sit in an
23 electronic queue, where they wait until court staff are able
24 to conduct what the defendant calls ministerial review, which
25 is checking for clerical and other administrative things.

1 It's basically a form of quality control, as we hear counsel
2 talk about it, because they're checking for clerical and
3 administrative errors.

4 So the defendant does not actually see that
5 Courthouse News is experiencing these delays in access as a
6 result of the Idaho courts' practice of withholding access
7 until after clerical review. The delays between submission by
8 the filer and review by the court, those are at issue, and
9 defendant acknowledges they exist. So, you know, defendant is
10 asking -- instead of saying there are no delays, she's simply
11 asking the Court to review them differently in terms of
12 business hours so they just look less severe than how
13 Courthouse News experiences them in kind of real life and
14 realtime based upon the actual passage of time.

15 And this distinction -- I'll be very brief here --
16 it's immaterial because defendant's business hour formulation
17 actually confirms the delays experienced by Courthouse News.
18 Defendant claims that on average, it takes four or five
19 business hours for court staff to get to the complaints in the
20 queue and conduct their ministerial review. Well, an average
21 delay of four or five business hours means that new complaints
22 received on or after noon on any given day would be delayed
23 until the next court day. And of course, we're speaking in
24 averages here. Courthouse News's moving papers cite to
25 provide specific examples of newsworthy civil complaints that

1 were delayed for much longer.

2 So those are the delays at issue. That's the basis
3 of the claim. And we now need to apply the second part of the
4 *Press-Enterprise II* test in order to see whether or not
5 Courthouse News is entitled to relief based on the likelihood
6 of success on the merits.

7 And again, the second part of the test is defendant's
8 burden. Defendant carries the burden of justifying these
9 delays under rigorous scrutiny, and to do so she must
10 establish that there's a substantial probability that a
11 compelling governmental interest would be impaired by
12 immediate access. And counsel asserts the fair and orderly
13 administration of justice as that interest, and we'll talk
14 about that. And that's the same interest that the *Planet*
15 defendants asserted. And then, second, that no reasonable
16 alternatives exist to adequately protect that governmental
17 interest.

18 So again, I don't want to belabor the point any more
19 than I have already done so, but this is the same test that
20 the growing list of Federal District Courts have already
21 applied. We have the Vermont case in *Gabel*. We have *Tingling*
22 in New York. These cases have applied the same test. And
23 specifically, I keep coming back to the *Gabel* case in Vermont,
24 because in that case Judge Reiss applied the second part of
25 the *Press-Enterprise II* test that this Court must now apply,

1 and she did so and concluded that the reasons for withholding
2 access to new e-files or complaints until after clerical
3 review did not survive constitutional scrutiny. And that's
4 the same e-filing system as the Idaho courts on a statewide
5 level. So there's nothing terribly controversial or unique
6 about that. We have to apply the test, and that's all we're
7 asking this Court to do.

8 So I want to spend the balance of my opening remarks
9 here just kind of walking through a few examples of how we
10 apply that test, because I think it's really important to
11 understand how we do so.

12 Again, at page 19 of her opposition brief, defendant
13 identifies the overriding governmental interest at stake as
14 the general interest in the fair and orderly administration of
15 justice. So we're going to have to, you know, unpack that box
16 a little bit and actually scratch the surface of what that
17 means and what that looks like.

18 And I'll do that in a minute, but before I do, I just
19 want to point out all courts, state and federal, share that
20 interest, including the many courts that provide access to new
21 e-filed complaints upon receipt and without delaying access
22 until after clerical review of the process. And the press and
23 the courts have worked side by side for as long as we've had
24 courts that have free press. And in this new electronic age,
25 they have found ways to do so, and there are many of them.

1 There are many alternatives. We heard counsel talk about
2 press review queue. Well, yes. For instance, some courts in
3 California, Arizona, and Georgia, they provide access to new
4 e-filed complaints without delaying access for clerical review
5 by making them available through Press Review Queues.

6 Now, we addressed this in more detail in our papers,
7 but all this is is a way to let the press or the public review
8 the complaint while it's sitting in the queue after the court
9 has received it so we don't have the delay of time from when
10 it's received to when it's accepted.

11 And many of the courts that provide access in this
12 manner, they do so using the same File & Serve system used by
13 the Idaho courts, but that's not the only way. There's the
14 auto accept option as well. And just to be clear, auto
15 accept, what I'm referring to there is the system that the
16 federal courts use, this court and many state courts, whereby
17 cases -- new e-filings, new civil complaints, upon receipt
18 they're automatically assigned a case number, and they're
19 automatically made available on the court's public docket.
20 State courts in Nevada, Hawaii, Utah, and how Vermont provide
21 on-receipt access in this manner. Again, this court provides
22 access to new e-filed complaints in that manner, as do the
23 vast majority of federal courts using the PACER system. So,
24 you know, the list of courts that provide timely, on-receipt
25 access to new e-files goes on and on. We identify them in the

1 papers. I don't want to illustrate every single one right
2 now.

3 The point is that all of these courts share
4 defendant's interest in the fair and orderly administration of
5 justice. So that vague assertion cannot by itself constitute
6 a compelling governmental interest that warrants withholding
7 access to newly filed complaints until after clerical review
8 for processing. Additionally, the ability of these other
9 courts to provide that access further demonstrates the
10 availability of less restrictive alternatives to the Idaho
11 courts' current practice. So again, we're just following the
12 test. That's the two-part test.

13 So as we apply the second part of the
14 *Press-Enterprise II* test in this case, we cannot blindly
15 accept defendant's assertion that the practice of withholding
16 access to new e-filed complaints under ministerial review and
17 until after acceptance is necessary to protect the fair and
18 orderly administration of justice. We know from experience in
19 these other courts that is not necessary. So the rigorous
20 scrutiny that this Court must apply to the reasons by
21 defendant for Idaho's current practice require that we scratch
22 the surface and closely scrutinize those reasons. As the
23 Ninth Circuit said in *Klein v. San Clemente*, this Court cannot
24 rubber stamp an access restriction simply because the
25 government claims it is necessary.

1 So I'll spend the remaining part of my time --

2 (Reporter interruption.)

3 THE COURT: I know you're worried about the time, but
4 don't. We're doing okay.

5 MR. FETTERLY: Thank you both. I appreciate the
6 reminder, and I will slow it down. I'll spend the balance of
7 my time simply illustrating a few examples of how we apply
8 that rigorous scrutiny test to the issues that the defendant
9 has raised in her papers. So let's take a look at what that
10 actually looks like here. And I'm not going to address
11 everything in the papers. It's in them. These are a few
12 examples.

13 So as the first example, defendant claims that
14 providing pre-review access to new e-filed complaints could
15 result in the disclosure of sensitive and confidential
16 information. But she does not establish that the current
17 practice of delaying access for ministerial review actually
18 protects against the hypothetical risk.

19 Under the Idaho Rules of Civil Procedure 2.6(a) and
20 under the Idaho Rules of E-Filing and Service 15(a), (b), and
21 (f), sensitive information must be redacted by the filers, not
22 the clerks. 15(a) explicitly states clerks will not review
23 e-filing for sensitive information. Under the rules,
24 documents accompanied by a motion to seal must be filed in
25 paper, IRS 5(h). It's also posted on the frequently asked

1 questions portion of the iCourt website.

2 So there's simply no nexus between defendant's
3 current practice and the hypothetical harm she claims could
4 result if the Idaho courts applied one of the available less
5 restrictive alternatives. And of course, courts handle
6 confidential filings, documents, and sensitive information all
7 the time. That's the nature of the business. And that
8 includes courts that provide access without delaying it for
9 clerical review. So there are less restrictive alternatives.

10 Defendant also points to cost as the reason why the
11 Idaho courts supposedly cannot provide access to complaints
12 through a press queue. She claims that Tyler, the e-filing
13 vendor, has quoted a price tag of \$108,000 annually --
14 annually -- to provide access through the review future that
15 already exists. And we know from experience it does not cost
16 that amount or any amount. Numerous courts using Tyler
17 software have confirmed that Tyler did not charge them for
18 their press queues. This is in the opening and the
19 supplemental record declarations.

20 In New Mexico, Judge Browning found, based on a
21 preponderance of the evidence, that there would be no charge
22 for a press queue even though the defendant in that case
23 cited -- or quoted the same price tag from Tyler. And in
24 Arizona, the state court administrator arranged for its vendor
25 to create a press queue from scratch for a onetime charge of

1 \$12,500.

2 So, you know, perhaps most troubling here is that
3 this quoted price tag of \$108,000 appears to represent an
4 attempt by Tyler, a third-party vendor, to create an annual
5 revenue stream and profit off the public record. And we're
6 not talking about a onetime installation or setup fee, like we
7 saw in Arizona. This is six figures annually. And I'm sorry,
8 but it simply cannot be the case that a vendor can attempt to
9 create a revenue stream and profit from the public record and
10 can constitute a legitimate and compelling governmental
11 interest that justifies an access restriction.

12 So then, finally, the opposition papers describe
13 Idaho's current administrative practices in rather great
14 detail, implying that providing more timely access may require
15 them to change one or more of their practices. They talk
16 about filing fees, letting court clerks review documents, all
17 manner of things that all courts deal with, including those
18 that provide timely access without delays.

19 And the point I want to emphasize here is that, yes
20 indeed, some internal administrative procedures may need to
21 change. That is the inevitable result of a policy or practice
22 is found to violate the constitution. And although defendant
23 does not come right out and say this in her opposition papers,
24 the rather clear implication is that preservation of the
25 status quo is itself an overriding interest for which there

1 are no readily available alternatives. However, as we
2 explained in our reply brief, the status quo simply cannot be
3 used to justify the status quo. Otherwise, virtually no
4 Section 1983 action could succeed.

5 And as I conclude my opening remarks here, I once
6 again direct the Court to Judge Reiss's recent order and
7 findings in the *Gabel* case in the District of Vermont. Again,
8 same e-filing system, same arguments, same issues. And within
9 three weeks of Judge Reiss entering a permanent injunction
10 prohibiting the defendant's practice of withholding access
11 until after clerical review, the Vermont courts implemented an
12 auto-accept system that now provides the press and the public
13 with timely, on-receipt access to new e-filed civil
14 complaints, just like this Court did -- or this Court does,
15 just like the vast majority of federal courts do. And we talk
16 about this in the supplemental Girdner declaration.

17 And as far as we know, none of the parade of
18 horrors that defendant cites in her opposition papers has in
19 fact come to pass by simply providing access in the same
20 manner that the vast majority of federal courts do and many
21 other states' courts do, including other courts using the
22 Tyler e-filing system.

23 So just as the defendant in the Vermont case failed
24 to justify her burden under the second part of the
25 *Press-Enterprise II* test, we believe here as well that if this

1 Court simply scratches the surface of defendant's
2 justification and properly scrutinizes them by applying the
3 second part of the *Press-Enterprise II* test, as it must --
4 because it is a Supreme Court and Ninth Circuit authority --
5 we find that defendant simply has failed to meet her burden of
6 justifying the access delays.

7 One last thing I also want to point out, and then
8 I'll reserve the balance of my time for reply. I'll note
9 there have now been four or five different cases in which the
10 federal courts have granted injunctive relief on this same
11 issue, prohibiting a policy or practice that withholds access
12 until after receipt. None of those orders have dictated to
13 the state courts how to do their job or what to do. None of
14 those orders have specified a particular manner or method of
15 access. They have simply said the practice of withholding
16 access until after clerical review fails the constitutional
17 test because the defendants have failed to survive rigorous
18 scrutiny or constitutional scrutiny.

19 And so, yes, it may be that the inevitable result
20 there is something that closely resembles immediate or
21 preprocessing access, but the federal court is not dictating
22 the courts what to do. These courts are simply choosing one
23 of the many alternatives that is available to them, one of the
24 many less restrictive, available alternatives. And in any of
25 those cases, and all of them, where the courts have complied

1 with the injunction by implementing one of the available
2 alternatives, at no point has Courthouse News ever had to go
3 back to the court to seek enforcement, and at no point has the
4 court ever had to step in and intervene. There's been no
5 ongoing federal audit to invoke an extension term. There's
6 been nothing of the sort.

7 So we simply ask this Court to apply the test, and we
8 believe if it does so, it would conclude that defendant has
9 failed to meet her burden under rigorous scrutiny. Thank you,
10 Your Honor.

11 THE COURT: Counsel, I do have one question before
12 you end. You mentioned that there were four or five cases out
13 there that have reached the level of a preliminary injunction
14 and granted it. Are you aware -- I'm not, but are you aware
15 of any cases out there where the court got to the preliminary
16 injunction stage and denied a preliminary injunction?

17 MR. FETTERLY: No, Your Honor, I am not either. I
18 believe that the two cases where Courthouse News has been on
19 the wrong end of a ruling have been on that abstention ground
20 that we discussed earlier. That's *Brown* in the Seventh
21 Circuit and then, you know, the *Gilmer* case in the Eastern
22 District. And I will note in the Seventh Circuit the
23 underlying District Court opinion applied the test and found
24 the defendant failed to meet her burden. So that was an
25 appeal from an order granting the preliminary injunction. The

1 Seventh Circuit ended up dismissing the case on abstention
2 grounds.

3 But to Your Honor's point and to the question, no,
4 I'm not aware of any case where the District Court applied the
5 test and found that the defendant satisfied it. I suppose, in
6 full candor here, that in the *Planet* opinion, we do have kind
7 of a split on the scanning policy. But that's a little bit
8 different. And in the e-filing context, the answer is, no,
9 I'm not aware of any court that considered an e-filing
10 scenario like we have here, applied the test, and found that
11 the defendant met their burden, and then on that basis
12 declined to grant the injunction.

13 THE COURT: Okay. Thank you.

14 Ms. Duke, you may go ahead. And if you have a
15 different answer on my question, you're welcome to give it.
16 Otherwise, you can just go ahead.

17 MS. DUKE: Sure, Your Honor. Thank you. I'm not
18 aware of -- certainly not every court has issued a preliminary
19 injunction. I don't think that Mr. Fetterly can say that,
20 whether they just haven't gotten to that decision yet, whether
21 that wasn't what was precisely requested.

22 But in this instance, Your Honor, I think the big
23 question -- you know, one of them for Mr. Fetterly is, under
24 the automatic -- we all get it. If it's, you know, submitted
25 through the electronic court record, we all get the complaint.

1 Under that, how is the second significant balancing scale in
2 the *Planet III* case addressed? We know *Planet III* said you've
3 got a qualified right of timely access to newly filed,
4 nonconfidential complaints.

5 But it went on to say, however, this right does not
6 entitle the press to immediate access to those complaints.
7 Some reasonable restrictions resembling time, place, and
8 manner regulations that result in incidental delays and access
9 are constitutionally permitted where they are content neutral,
10 narrowly tailored, and necessary to preserve the court's
11 important interest in the fair and orderly administration of
12 justice.

13 How does CNS's request to this Court related to an
14 injunction give any recognition, any weight at all to that
15 other important balance that *Planet III* has defined as the law
16 of our circuit? It doesn't. If you were to grant the
17 injunction that they have sought, then when a complaint is
18 submitted through the Tyler filing system, that means it's
19 automatically within our court record, which it is not. It's
20 still on the Tyler side of the filing. But even if it was
21 immediately on our side of the filing, then there's no
22 administrative review that Mr. Fetterly and CNS are indicating
23 to you will occur or should occur.

24 That completely ignores the holding of *Planet III*,
25 and it obliterates that important scale that I mentioned in

1 our opening remarks on the motion to dismiss, Your Honor. The
2 State -- it is acknowledged that the State has an
3 administrative interest in the fair and orderly processing of
4 filings. If we grant CNS what they want, which is to have a
5 submission automatically provided to CNS, how are we -- how
6 are we handling that administrative interest? We're not.

7 And why other courts in our circuit have not looked
8 at that, have not seen that that's an important part of
9 *Planet III*, I don't know. But I never like the argument that
10 CNS is making of, "Well, Judge, just because all of these
11 other courts are doing it, you would be crazy not to." We
12 have a Ninth Circuit case that specifically states here's your
13 balancing that you're going to do. The public interest and
14 contemporaneous filings with the court and the State's
15 administrative interest in the fair and orderly processing of
16 complaints.

17 THE COURT: Am I splitting the hairs too much to say
18 that there's a difference between providing it immediately and
19 not delaying access? Could I view those as two separate
20 things?

21 MS. DUKE: Of not providing it immediately and of
22 delaying access?

23 THE COURT: Not delaying access. Is there a
24 difference between immediate access and not-delayed access?

25 MS. DUKE: Well, I think in Idaho's context there is,

1 and that is there is no delay in access. Because once it is
2 accepted and filed, unlike *Planet III*, where the clerk even
3 after that step had a supervisory review and then couldn't say
4 that the complaints made it into the bin, in Idaho, once
5 our -- once our clerks perform that very crucial balancing
6 test that CNS wants ignored, that administrative interest in
7 making sure that we're maintaining our court records, once
8 they say, "Boom, yes, I've got the check, I've got the
9 signature," it's now accepted as a file -- or a filing, it's
10 immediate.

11 And so, Your Honor, I hope I'm answering your
12 question. I don't know that I fully understood it, but I can
13 tell you this is a very different circumstance than anything
14 else presented, and that is that even though the State of
15 Idaho does not have to provide immediate access once a
16 document is filed, it is. So what's the harm to CNS? How is
17 it not newsworthy for them to say, "Today filed in the state
18 of Idaho: Huge case against the State of Idaho for
19 environmental claims"? That is the newsworthy point.

20 CNS is saying that they are somehow not having their
21 First Amendment right satisfied because they can't say to the
22 public, "Hey, there's going to be a filing. We know it
23 because there was a submission to this -- to the Idaho courts.
24 They're looking at it to get it now officially filed."

25 Where is -- where is this great harm that they're

1 referencing? It's an immediate access, an access that, Judge,
2 I didn't even appreciate until I worked with my clients on
3 this. Once the clerks say, yes, this is filed, that's the
4 first time even the judge knows about the case.

5 THE COURT: Right.

6 MS. DUKE: CNS wants to know about the case before
7 anybody. They want to know about it at the very same time
8 that the runner is literally leaving my office to walk to the
9 courthouse to file the complaint and to stop my runner and
10 say, you know, "Hey there, Ally, do you mind? I need to see
11 that real quick before you hand that to the clerk, because I
12 need to now take that and run and get an advantage on other
13 news organizations."

14 That's not what the First Amendment's for. The First
15 Amendment is for the timely access without unreasonable
16 restrictions to -- we admit, to court filings. And that's why
17 this concept of filings is so crucial and why it's so ignored
18 in CNS's papers.

19 Judge, did I hit your question and answer it?

20 THE COURT: Yeah.

21 MS. DUKE: I really want to.

22 THE COURT: I think you did. Go ahead with your
23 argument.

24 MS. DUKE: Okay. Thank you, Your Honor.

25 So when you look to the preliminary injunction

1 standard, I mean, this is an extremely high burden that CNS
2 has. This is not the situation where we don't have immediate
3 access to a filed complaint. We have that in Idaho.

4 Mr. Fetterly has to admit that.

5 So there is no way that they can show that there's
6 some irreparable harm in that they're not receiving
7 immediately filed complaints. Instead, again, they want you
8 to not let the clerks do exactly what the Idaho Supreme Court
9 has instructed them to do, and that is to review the
10 complaints, take care of the administration portion, and then
11 let them be a part of the official court record.

12 I don't see how the second balance is in any way
13 factored in if any news organization, including CNS, gets the
14 prefiled submissions by a party, again, stopping my runner on
15 their way to the courthouse. And I suspect their argument's
16 going to be, yeah, but in this new-fangled, you know, e-filing
17 world, we can file in the middle of the night or file on
18 Christmas Day or submit on Christmas Day or submit on a
19 weekend. A court clerk has still not had the opportunity to
20 do their job, and that is to make sure that the processes are
21 being filed -- or followed.

22 And so it really is a distinction that is glaring
23 when you read through *Planet III* and what CNS is asking this
24 Court to do. And again, I -- I'm puzzled by how other courts
25 have not followed that second scale, but they haven't. It's

1 as if there's just one scale in CNS's argument.

2 Your Honor, quite frankly, for CNS to prevail, you're
3 going to need to ignore a lot of things. You're going to need
4 to ignore those limitations that are specifically outlined in
5 *Planet II*. As you know, in your review of *Planet III*, at
6 page 596 that, *Planet III* itself acknowledged even in this era
7 of electronic filing systems, instantaneous public access to
8 court filings, especially complaints, could impair the orderly
9 filing and processing of cases with which clerks' offices are
10 charged. After all, litigants are not uploading their
11 complaints to the Internet. They are filing them with the
12 court, making them subject to judicial administration.

13 How is a complaint in Idaho subject to judicial
14 administration if this Court orders that every nonconfidential
15 complaint filed in the state of Idaho be immediately available
16 pre-administrative processing? We submit to you that that
17 can't be done.

18 The *Planet* case went on to emphasize that the First
19 Amendment does not require courts, public entities with
20 limited resources, to set aside their judicial operational
21 needs to satisfy the immediate demands of the press. Now,
22 that's why, I'm sure, CNS argues that the State of Idaho needs
23 to implement -- which likely -- you know, who knows, but
24 likely when we're talking implementation, read through those
25 declarations that CNS has submitted. They're talking about

1 implementation. They're not talking about licensing.
2 Licensing is a very different beast than implementation. A
3 company can come and say, "We'll implement this. We'll get
4 your programming running. We'll get it up. But by the way,
5 to use it, for the next year it's going to be \$108,000. And
6 to use it the year after, it's going to be \$108,000, until we
7 contract again."

8 And there is nothing that Mr. Fetterly has provided
9 from anyone to dispute what Ms. Omundson submitted to you:
10 that the State of Idaho -- if you are to rule that they are
11 now enjoined from following their court rules and from doing
12 their process, the State of Idaho is now going to need to go
13 and get legislative approval to add to its budget to then
14 implement this system. All of this is in contradiction to
15 *Planet III*, all of it. Where is the judicial administration
16 that they have the ability to do?

17 Now, in their submissions that they provided to you,
18 you know, those green and yellow and red spreadsheets, those
19 spreadsheets start with date filed. And I should at least
20 just show this, Your Honor. So let me just pop that up here.
21 So if you look here, and it's a little hard to see, but you'll
22 see the red and then you'll see their little column. It says
23 "date filed." That is -- that's the very start of them trying
24 to show you that 44 counties of elected clerks and all of
25 their staff are failing to do their job. And they're basing

1 it on an absolute, in my view, misconception and trying to, I
2 think, hide the ball on what "filed" means. It's not filing.
3 What it should say there, Your Honor, if they were going to be
4 genuine in their report of data, is it should say "date
5 submitted." Then there should be a "date filed."

6 And what did we do to contradict and counter that?
7 We worked hard to show you, Judge, that if you actually take
8 the data and if you actually do a few things that comply with
9 Idaho's rules, that our Idaho clerks -- and if you look here,
10 this is at Docket 20-3. Our Idaho clerks are, in this time
11 period of 9/1/2021 to 10/31/2021 -- which is a time period
12 that CNS cleverly chose, because it knew that the State of
13 Idaho had Tyler, who was changing one of the platforms. That
14 caused some delays by our clerks. That had nothing to do with
15 our clerks and their administrative processing with but
16 instead a switchover to Amazon. They cleverly chose this time
17 period.

18 And what they also did is they did a 24/7/365
19 analysis, failing to factor in courthouse hours. Now, let's
20 think about that, because courthouse hours were at issue in
21 the *Planet III* case. And what was the *Planet III* clerk doing
22 with courthouse hours? The *Planet III* clerk had adjusted them
23 to deal with, you know, we're open until 4:00 or 4:30, but
24 we're not going to let you have access to these filed
25 complaints after 3:00 because we got to get some stuff done.

1 That's not what the state of Idaho's doing. The
2 state of Idaho has access during court hours to all of the
3 administratively reviewed, accepted, filed complaints. And if
4 you factor in 24/7/365, they are doing that in this time
5 period at an average time of 5.07 hours to review, approve,
6 and have it filed. How is that not timely for CNS to then be
7 able to report a newly filed complaint today, stating blank?

8 I'll also note that all of this is done through the
9 lens of what we've all been experiencing together, something
10 that the entire world, humanity has all experienced all
11 together, and that is COVID. And you look at -- when we have
12 a search in, for instance, Ada County and we have our
13 hospitals on crisis standards of care in this very time
14 period, what are our court clerks doing? They're doing their
15 job. They are doing the administrative task that *Planet III*
16 charged them with and said they could do, and they're doing it
17 and they're doing it timely.

18 CNS wants everybody to ignore those clerks, to ignore
19 what they do, and to ignore the important function of their
20 job. They want records automatically included in the court's
21 file so that they can see them, in complete contradiction to
22 what the Idaho Supreme Court has identified as its process for
23 forming the necessary administrative review of complaints.

24 You'll also note that in the supplemental filing --
25 and I don't have a slide on this one, but in the supplemental

1 filing, they then also chose to take January and February of
2 this year, which we responded to. And we unfortunately all
3 know -- and as Patti's going through now and as my entire
4 family and myself went through two days before Christmas for
5 the next two weeks, we, as we call it, got omicron, as did the
6 great majority of the state of Idaho from mid-December through
7 about three weeks ago. We've all watched the curves.

8 And the data that we submitted to you, Your Honor, is
9 that our court clerks were still doing exactly what they're
10 allowed and permitted to do under *Planet III*, and that is
11 timely review submitted complaints and mark them accepted.
12 And once they're accepted, they are immediately available.

13 And this concept -- I guess I would love to know how
14 the First Amendment -- of why it gets to ignore business
15 hours. And as Justice Smith noted in his concurrence, you
16 still need to have the reasonable access to review these
17 administrative filings. And as *Planet II* indicated -- let me
18 get there -- again, the First Amendment does not require
19 courts, public entities with limited resources, to set aside
20 their judicial operation to meet the immediate demands of the
21 press.

22 CNS here has required -- or is requesting you to
23 order that immediately the entire state, 44 counties with
24 their elected clerks and all of their staff, process and
25 evaluate complaints to make sure that they can be included in

1 the judicial record. That is not something that should be
2 done at this preliminary injunction stage.

3 And if this Court is not going to dismiss the case,
4 is not going to abstain, then we request, Your Honor, that a
5 trial occur so that the Court can understand and hear
6 testimony as to the great implication of what it is CNS is
7 trying to do, which includes erasing part of *Planet III's* very
8 holding, which, as you know, Your Honor, is this portion here:
9 However, this right does not entitle the press to immediate
10 access to those complaints. Some reasonable restrictions
11 resembling time, place, and manner regulations that result in
12 incidental delays in access are constitutionally permitted
13 where they are content neutral, narrowly tailored, and
14 necessary to preserve the court's important interest in the
15 fair and orderly administration of justice.

16 We have provided to you, Your Honor, affidavits and
17 whatnot for you to review so that you have an appreciation of
18 what the evidence will be in the event the case is not
19 dismissed and we head to a motion for permanent injunction.
20 And when you look to what we've submitted to you, Your Honor,
21 the balance of the equity very much tips in favor of the Idaho
22 courts. The Idaho courts, if an injunction issues, will be
23 forced to rebuild their entire system for new filings. The
24 Idaho Supreme Court will be forced to implement, revise, and
25 upgrade new court administrative rules.

1 And I understand Mr. Fetterly's going to say, you
2 know what? When states are behaving badly, you've got to step
3 in, and you've got to deal with these things. And there
4 should not be an issue with the State of Idaho having to
5 revamp its entire process because all these other states where
6 judges have ignored the second important balancing act have
7 been able to do it. Well, that is not what *Planet III* says.

8 In addition, there will be a change to court rules.
9 They're going to necessitate training 44 county clerks, all of
10 their staff, and all of the staff in Ms. Omundson's office to
11 handle this new system. A change to auto-accept will
12 necessitate training Idaho's state court judges regarding the
13 new policy, because what do they do when someone files -- like
14 you asked me at the start of the hearing, Judge, when someone
15 is auto-accept, here's what happens, and here's why Rule 12
16 protects against this and in the balance of a litigant's
17 interests, in my view, should happen with electronic court
18 submissions.

19 Under the Idaho system, if you goof and you didn't
20 provide the proper filing fee, guess what happens? That
21 filing's rejected. And guess what defense lawyers like myself
22 are going to do for our insurance claims? You better bet I'm
23 going to come in and say, "I'm sorry. It was rejected. It
24 wasn't filed on time. Yeah, it was auto-accepted, but a Court
25 has since dismissed it because the filing fee was not paid."

1 And you can bet that we're going to argue that the statute of
2 limitation was not met.

3 Is that right? Is that fair? Is that just? That
4 does not occur under the court system now. Under the court
5 system now, that litigant has three days to correct the issue
6 under Rule 12. That litigant has three days to be able to
7 say, "Oh, I didn't get you my filing fee? Here you go." How
8 is that so damaging to the First Amendment access to a
9 complaint versus all of the perils that could exist on the
10 other side of it?

11 You also are going to have to educate the
12 attorneys -- which I often say managing attorneys is like
13 herding cats -- about the new system. They're going to have
14 to know that there's no more three-day grace period. And as
15 we submitted to you with the Ada County clerk's declaration,
16 gone is the enforcement ability of the clerks to be able to
17 have the rule to say, "You know what? You didn't file it
18 correctly, Ms. Duke. You've got to get your affidavit with a
19 signature." Right now, if I don't do that in three days, it
20 will not be accepted for filing as of the date it was
21 submitted. It will be late.

22 There will be no power under this auto-accept feature
23 for a county clerk to go and have the actual record itself be
24 complete and be what it's supposed to be so that a district
25 judge or magistrate judge can make a decision. This is why

1 *Planet III* very wisely included the second scale, the scale
2 that CNS ignores. And that is the scale of we need to make
3 sure from an administrative standpoint our court records are
4 accurate and complete.

5 In addition, the press review queue -- here's where
6 we come to a unique Idaho issue that CNS ignores. That again,
7 Your Honor, is that case I cited to you earlier, where "press"
8 is not defined in the state of Idaho like it is in California
9 and other states. The Supreme Court has declined to do so.
10 The press is the public under Idaho law, period. CNS has no
11 greater right than my grandmother, than my kids to go access
12 something. They don't have a greater right. They're asking
13 you to have something special that no one else will have. The
14 public is the press in the state of Idaho. That's not like
15 California; that's here.

16 And again. I mentioned the \$108,000. Mr. Fetterly
17 can unsupportedly and without foundation make lots of
18 assertions as to Tyler, and he can also say, "Oh, I can't
19 believe a company would charge for something like that, and
20 that's not right." Well, guess what? That's what
21 Ms. Omundson was told: "If you have the press review queue,
22 you -- we will implement it, but you're going to have \$108,000
23 a year as an estimate to have this benefit of a press review
24 queue."

25 There is nothing in *Planet III* -- and in fact

1 *Planet III* itself -- again on that quote that I've shown you
2 before many times that is ignored by CNS -- does not require
3 courts, or a public entity with limited resources, to set
4 aside their judicial operational needs to satisfy the
5 immediate demands of the press.

6 How is 5.07 hours -- business hours -- to review a
7 complaint impeding CNS's right to timely review? We submit,
8 Your Honor, that it's not. And under *Planet III* there is
9 no -- there is no harm to them, because we're doing exactly
10 what *Planet III* said we could do, and we're doing it in a
11 timely fashion.

12 We even have our Supreme Court saying -- they rule
13 that it can take up to three days. That's not even what's
14 happening. It's happening much sooner than that, unless you
15 want to manipulate the data and ignore when clerks actually
16 work. Under CNS's theory, we as a state should now staff our
17 clerks' offices 24/7/365 if we want to be able to not have a
18 press review queue, if we want to be able to do some sort of
19 orderly administration of justice. And that's not at all what
20 any of the precedence says.

21 You know, Your Honor, one last point I'd like to
22 make. You had asked me at the conclusion of our last
23 argument, What do we use? And in that tax case, in *Schaefer*,
24 there was a note that the U.S. Supreme Court can also handle
25 those types of things when there is something that a state

1 court is doing that has been challenged. And so when you look
2 to that precedent as well, that's at least an avenue.

3 Your Honor, do you have any questions for me, or is
4 there anything I can hit? Because I want to make sure that
5 I've answered anything you have to your satisfaction.

6 THE COURT: I do not have any further questions.
7 Thank you.

8 MS. DUKE: All right. Thank you, Your Honor. We
9 would request, then, that the preliminary injunction be
10 denied.

11 THE COURT: All right. Mr. Fetterly, you may have
12 about five minutes for rebuttal.

13 MR. FETTERLY: Thank you, Your Honor. I want to
14 first start by addressing this issue about kind of the
15 immediate access again that counsel keeps referring to and
16 this notion that *Planet III* somehow has this alternative
17 test -- the other scale, if you will -- that isn't reflected
18 in the opinion, quite frankly. And I think the reason why
19 counsel hasn't seen any other court apply the so-called
20 additional scale is because it's not the actual test. We have
21 the *Press-Enterprise II* test, and that is the test.

22 You know, Your Honor, you posed the question, is
23 there a distinction between immediate access and enjoining a
24 policy or practice that results in delays, and if enjoined may
25 in fact result in more immediate access?

1 Yes, I think there is a distinction, and the
2 distinction again hinges on the qualified First Amendment
3 right of access. I think counsel perhaps, you know -- well, I
4 think part of the confusion in *Planet II* is that there are
5 three phrases, like entitlement, demanding, and these words.
6 I think if we read *Planet III* clearly, it comes out that what
7 the court is saying is that there is no immediate right of
8 access in the sense that if there is a delay, Courthouse News
9 cannot say, "My First Amendment rights have been violated" per
10 se because there was a delay. It's a qualified right.

11 Defendant has the opportunity under the
12 *Press-Enterprise II* test, the second part of it, to justify
13 the delay. And that's why we have the immediate right and
14 that's why we have all of this language throughout *Planet III*
15 that says there's no entitlement.

16 However, immediate access is not off the table just
17 because the defendant has to justify her burden under
18 *Press-Enterprise II*. And I'd point the Court -- this is the
19 response to the surreply, but it's in *Planet III*, and I
20 quote -- and I just point to this document because it's
21 recent, and it's a one-page document. I quote from
22 *Planet III*: The defendant's burden is to first -- quote,
23 Demonstrate that first there is a substantial probability that
24 its interest in the fair and orderly administration of justice
25 would be impaired by immediate access and, second, that no

1 reasonable alternatives exist to adequately protect that
2 government interest.

3 So the Ninth Circuit is even using immediate access
4 in the test. And we're not demanding it as a matter of right
5 because the First Amendment entitles us to do it. What we are
6 saying is that under this test, defendant has failed and will
7 fail at trial to show that there is in fact a substantial
8 probability that its interest in the fair and orderly
9 administration of justice would be impaired by immediate
10 access.

11 And so if the Court applies this test and if the
12 Court finds that defendant has failed to meet her burden, the
13 policy and practice that results in the delays in access can
14 be enjoined. And if we enjoin that practice, yes, it may in
15 fact be that there is immediate access, but that's not because
16 the First Amendment demands it. It's because defendant failed
17 to meet her burden under constitutional scrutiny of justifying
18 the practice. So that, I believe, is the distinction. And
19 again, that's why I just keep coming back to the idea that
20 this is a test, and we ask the Court to apply it.

21 Now, very briefly, a few other points. Counsel has
22 made various arguments based upon the court rules. There is
23 no conflict between the court rules and the First Amendment.
24 There's not a single court rule that I'm aware of -- and I
25 don't think counsel has pointed to one -- that says that

1 access cannot be provided to the public or the press until --
2 and to be clear, we're not suggesting that Courthouse News has
3 any greater rights than the public. But as *Planet III* talks
4 about, the press is the public. It is an extension of the
5 public. There's nothing in the rules that says that access
6 must be withheld or restricted until after clerical review and
7 acceptance. So there's no tension. There's no conflict.

8 And we are not saying that the court clerks cannot do
9 their jobs. What we're saying is that they cannot withhold or
10 restrict access while they do them. And that really is the
11 crux of what Judge Reiss talks about at length in her ruling
12 and order out of Vermont. In the -- in the electronic world,
13 you don't have some of the same considerations you have in the
14 paper world, which the *Planet* court had to deal with. We
15 aren't talking about a singular physical object only one
16 person at a time can hold. We're talking about an electronic
17 document that eliminates those barriers, eliminates those
18 issues. Judge Reiss talks about that. And in the electronic
19 world, there is simply no compelling or governmental interest
20 to withholding access to that document while the court staff
21 do their job.

22 And, yes, there has been a pandemic. Yes, there is
23 hardship. There will always be circumstances that make life
24 hard, and Courthouse News is not unsympathetic to that. We're
25 not asking anybody to not do their job, and we're not looking

1 past the realities of life.

2 But what we are saying is that these circumstances
3 really illustrate the problem with inserting, you know, human
4 physical review of documents and withholding access while the
5 courts do their jobs. If you simply remove the policy or
6 practice of withholding access until after review and
7 processing, all of these other issues simply fall by the
8 wayside. They're not real issues anymore, and they need not
9 be issues, as we see in the vast majority of federal courts
10 that provide this level of access and the numerous state
11 courts that do so as well.

12 So, you know, again, we've talked a little bit
13 about -- counsel talked about filed versus received. You
14 know, there's no sleight of hand here. We believe filed and
15 received are synonymous and interchangeable as the Ninth
16 Circuit uses them. I suppose there is a difference between
17 the clerical and administrative use of that word as defendant
18 uses it versus when the First Amendment right attaches, which
19 is upon receipt.

20 But as we talked about in our papers, you know,
21 clerical definitions simply cannot define the First Amendment,
22 and the First Amendment does not bend to local court rules.
23 That's -- that's just the opposite. Supreme Court rule
24 establishes that local court rules must comply with the
25 substantive law. And what we're saying here is, you know, the

1 First Amendment trumps.

2 But once again, there is no conflict, because these
3 rules do not actually prohibit access. Counsel invokes the
4 three hours [sic] that is allowed under the Public Records Act
5 in Idaho, which I think, as we all commonly know, is simply
6 used for archival research and such things. Yes, some period
7 of time is allowed for clerks to do their job in responding to
8 those requests, but that does not preclude more timely access
9 under the First Amendment standard than applies to civil
10 complaints. And I guess if there were a conflict -- and to be
11 clear, there is not -- I don't think there would be any more
12 question that the First Amendment prevails and must trump the
13 local court rule or statute.

14 So when we start talking about the delays, counsel
15 spent a fair amount of time talking about the number of hours.
16 And, you know, again, this kind of just points or makes a
17 distinction between working hours and the real-life passage of
18 time. However you look at it, there is no actual dispute -- I
19 don't believe that there are delays in access. The only way
20 that delays are eliminated is if you start the clock on the
21 First Amendment once the document has been accepted, which is
22 after the delay at issue has already occurred.

23 So if we're talking about the length of time between
24 receipt by the Court or submission by the filer on the one
25 hand and clerk review and acceptance on the other, what

1 counsel's papers show is that, you know, during that period in
2 November, it was -- 5.8 average hours lapsed in between, and
3 in the surreply it was 4.81 average hours that lapsed in
4 between. Again, these are averages. It doesn't account for
5 the longer delays that exist that we address in our papers.

6 And I guess the important point that I want to just
7 land with here is that it's not this Court's job to divine the
8 number of hours that constitutes timely access. This Court's
9 job, as set forth in *Planet III*, is to apply the
10 constitutional test to those delays and closely scrutinize
11 whether the defendant's justifications for the current
12 practice of withholding access until after processing and
13 acceptance satisfies rigorous scrutiny. And we believe that
14 if the Court does that, as we've explained, that we'll find
15 that the defendant has failed to meet that test, just as the
16 clerks in the other cases that we've discussed have failed to
17 meet that test.

18 And to put a slightly finer point on it, I think the
19 problem here is that if the Court starts talking about four
20 hours is okay, five hours is okay, six hours is okay, whatever
21 the number may be, we've now created a First Amendment dead
22 zone. There's a period of time in which complaints can be
23 withheld from the press or the public for any reason or no
24 reason at all, and that is squarely at odds with the
25 *Press-Enterprise II* test as set forth in *Planet III*.

1 The defendant must demonstrate that, you know, more
2 immediate access would be impaired -- or governmental interest
3 would be impaired by more immediate access. That is the test.
4 This Court must apply that test. And that's what we ask the
5 Court to do, and we respectfully request that if the Court
6 applies that test, it will conclude that the defendant has
7 failed to meet her burden and that the motion for preliminary
8 injunction should be granted.

9 Unless the Court has questions, I have nothing
10 further, Your Honor.

11 THE COURT: No, I do not have any further questions.

12 I will say -- and I suspect that all of you hear this
13 quite frequently, and I mean that as a compliment. It's very
14 refreshing to get briefs and arguments as coherent and as well
15 done as has been done in this case, and I appreciate that.
16 The issues are clearly defined. The positions have been well
17 enunciated. Unfortunately, the hard part is coming to an
18 answer.

19 But I will take this under advisement. I will get a
20 decision out as quickly as I can. I'm not going to say it's
21 going to be immediate and I'm not going to say it's going to
22 be without delay, but I will get it out as soon as I can. So
23 thank you. Unless there's anything else, I think we're done
24 for today.

25 MS. DUKE: Your Honor, thank you for your comments.

1 Appreciate your time.

2 And, Patti, please get better.

3 MR. FETTERLY: Thank you, Your Honor.

4 THE COURT: Thank you, court's in recess.

5 (Proceedings concluded at 11:51 a.m., February 18, 2022.)

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C E R T I F I C A T E

I, ANNE BOWLINE, a Registered Merit Reporter and
Certified Realtime Reporter, do hereby certify that I reported
by machine shorthand the proceedings contained herein on the
aforementioned subject on the date herein set forth, and that
the foregoing 73 pages constitute a full, true and correct
transcript.

Dated this 28th day of February, 2022.

/s/ Anne Bowline

ANNE BOWLINE
Registered Merit Reporter
Certified Realtime Reporter

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**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO
U.S. DISTRICT JUDGE MINUTE ENTRY**

(X) Motion hearing [7 & 14]

U.S. District Judge: David C. Nye
Deputy Clerk: Patti Richmond
Court Reporter: Anne Bowline

Date: February 18, 2022
Time: 10:00 – 11:50 am
Place: Boise, ID

COURTHOUSE NEWS SERVICE V SARA OMUNDSON
1:21-cv-305-DCN

Counsel for Plaintiff: Jonathan G. Fetterly and Debora K. Grasham
Counsel for Defendant: Keely E. Duke and Anne E. Henderson

- (X) All parties agreed to have this matter heard via zoom rather than an in-person hearing.
- (X) Court heard oral arguments.
- (X) Matter taken under advisement with a written decision to be forthcoming.

Debora Kristensen Grasham (ISB # 5337)

dkk@givenspursley.com

GIVENS PURSLEY LLP

601 West Bannock Street

P.O. Box 2720

Boise, Idaho 83701

Telephone: (208) 388-1200

Facsimile: (208) 388-1300

Katherine A. Keating (admitted *Pro Hac Vice*)

katherine.keating@bclplaw.com

Jonathan G. Fetterly (admitted *Pro Hac Vice*)

jon.fetterly@bclplaw.com

BRANCAVE LEIGHTON PAISNER LLP

3 Embarcadero Center, 7th Floor

San Francisco, CA 94111

Telephone: (415) 675-3400

Facsimile: (415) 675-3434

Attorneys for Courthouse News Service

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff,

v.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendant.

Case No: 1:21-cv-00305-DCN

**COURT OF SEVEN SERVICES
SECOND NOTICE OF SUBSTITUTIONAL
AUTHORITY IN CONNECTION TO
DEFENDANT'S MOTION TO DISMISS
AND IN SUPPORT OF
COURT OF SEVEN SERVICE'S
MOTION FOR RELIMINARY
INJUNCTION DATED 14**

Mindful of the volume of documents already before the Court, Courthouse News Service (“Courthouse News”) submits this Notice of Supplemental Authority to bring to the Court’s attention new authority directly relevant to the motions set for hearing on February 18.

The new authority, issued on February 14, is the Findings and Recommendations by Magistrate Judge *ou* in *Courthouse News Service v. Cozine*, Case No. 3:21-cv-00680- (D. Or.) (“*Cozine*”), attached hereto as Exhibit 1. Like this case, the *Cozine* case involves a claim arising under the First Amendment against the Oregon State Court Administrator based on state-wide delays in access to new e-filed civil complaints. The Findings and Recommendations address an issue presented in this case: when the First Amendment right of access attaches to new e-filed civil complaints. Applying the Ninth Circuit’s opinions from *Courthouse News Service v. Planet*, Magistrate Judge *ou* concludes the First Amendment right of access attaches to new e-filed civil complaints when they are *received* by the court, and rejects the Oregon State Court Administrator’s argument that the right of access does not attach until after new e-filed complaints are “accepted” by court staff.

Dated: February 15, 2022

BR AN CAVE LEIGHTON PAISNER LLP

/s/ Jonathan G. Fetterly
Jonathan G. Fetterly
Attorneys for Courthouse News Service

Debora Kristensen Grasham (ISB # 5337)

dkk@givenspursley.com

GIVENS PURSLEY LLP

601 West Bannock Street

P.O. Box 2720

Boise, Idaho 83701

Telephone: (208) 388-1200

Facsimile: (208) 388-1300

Katherine A. Keating (admitted *Pro Hac Vice*)

katherine.keating@bclplaw.com

Jonathan G. Fetterly (admitted *Pro Hac Vice*)

jon.fetterly@bclplaw.com

BRYAN CAVE LEIGHTON PAISNER LLP

3 Embarcadero Center, 7th Floor

San Francisco, CA 94111

Telephone: (415) 675-3400

Facsimile: (415) 675-3434

Attorneys for Courthouse News Service

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff,

v.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendant.

Case No: 1:21-cv-00305-DCN

**RESPONSE TO NOTICE OF
SUPPLEMENTAL AUTHORITY
REGARDING DEFENDANT SARA
OMUNDSON'S MOTION TO DISMISS
[DKT 7]**

Defendant Sara Omundson’s notice of supplemental authority does not offer any authority at all. Defendant instead offers an *amicus curiae* brief filed in a pending First Circuit appeal involving a case in which the issue of abstention—an issue raised by Defendant in her motion to dismiss and for which she offers the *amicus* brief—was not raised or briefed by the parties in the district court. The *Courthouse News Service v. Glessner* case offers no authority from either the district court or the court of appeals on the issue of abstention. Defendant’s submission of an *amicus* brief on that issue at this late hour is nothing more than additional argument and briefing beyond the scope of this Court’s rules.¹ *See, e.g.,* Loc. Civ. R. 7.1 (addressing limitations on motion practice).

Regardless, the *amicus* brief offered by Defendant stands in stark contrast to the controlling Ninth Circuit precedent this Court should follow on the issue of abstention. In *Courthouse News Service v. Planet*—a case involving the same issue and claim as this case—the Ninth Circuit not once, **but twice**, rejected Defendant’s argument that the federal courts should abstain from hearing Courthouse News’ claim based on a violation of its First Amendment right of access to new civil complaints. The Ninth Circuit first rejected this argument in *Courthouse News Service v. Planet*, 750 F.3d 776 (9th Cir. 2014) (“*Planet I*”), when it reversed the district court’s order dismissing Courthouse News’ claim on abstention grounds. It then rejected Defendant’s argument a second time in *Courthouse News Service v. Planet*, 947 F.3d 581 (9th Cir. 2020) (“*Planet III*”), when it expressly disapproved of the Seventh Circuit case upon which Defendant relies for her abstention argument. 947 F.3d at 591 n.4 (“We disagree... with the Seventh Circuit’s decision to abstain from resolving the dispute about when the right attaches and when delays are so long as to be tantamount to a denial of the right.”). The *amicus* brief

¹ If Defendant believed *amicus curiae* support was necessary or appropriate for her motion she presumably could have requested it in this case, and in a timely manner.

offered by Defendant obviously does not (and cannot) provide a basis for this Court to deviate from binding Ninth Circuit authority.

Finally, there is no reason to believe the Ninth Circuit would consider this particular *amicus* authoritative. The Ninth Circuit heard from it on a different issue in the *Planet* case and rejected its arguments. In *Planet III*, the Conference of Chief Justices submitted an *amicus curiae* brief in support of the defendant clerk, arguing: (1) access to pre-judgment court records in civil cases is not compelled by the First Amendment; and (2) finding that a First Amendment right of access attaches when new complaints are filed would “burden the state courts in the performance of their duties.” 2017 WL 1857422, *ii. The Ninth Circuit rejected these arguments when it “conclude[d] that the press has a qualified right of timely access to newly filed civil nonconfidential complaints that attaches when the complaint is filed.” *Planet III*, 947 F.3d at 585; *see also id.* at 588, 594 (agreeing with district court that “the right to timely access attaches at the moment of filing, i.e., when the complaint is received by the court”).

Dated: February 11, 2022

BRYAN CAVE LEIGHTON PAISNER LLP

/s/ Jonathan G. Fetterly
Jonathan G. Fetterly
Attorneys for Courthouse News Service

Keely E. Duke
ISB #6044; ked@dukeevett.com
Anne E. Henderson
ISB#10412; ah@dukeevett.com
DUKE EVETT, PLLC
1087 West River Street, Suite 300
P.O. Box 7387
Boise, ID 83707
Telephone (208) 342-3310
Facsimile (208) 342-3299

Attorneys for Sara Omundson

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COURTHOUSE NEWS SERVICE,

Plaintiff

vs.

SARA OMUNDSON, in her official capacity
as Administrative Director of Idaho Courts,

Defendants.

CASE NO. 1:21-CV-00305-REP

**NOTICE OF SUPPLEMENTAL
SUPPORT REGARDING
DEFENDANT SARA OMUNDSON'S
MOTION TO DISMISS [DKT 7]**

Defendant Sara Omundson, by and through the undersigned counsel of record, Duke Evett, PLLC, hereby submits this Notice of Supplemental Support Regarding Defendant's Motion to Dismiss [Dkt. 7] the Complaint [Dkt. 1] filed by Plaintiff Courthouse News Service ("CNS"), to bring the Court's attention to updates to arguments being made regarding the issue of abstention, which is raised by Ms. Omundson's Motion to Dismiss.

In a case brought the District of Maine, which is in the first judicial district, *Courthouse News Serv. v. Glessner*, No. 1:21-CV-00040-NT, 2021 WL 3024286 (D. Me. July 16, 2021), Courthouse News brought an action similar to that in this case against the state court administrator for the State of Maine, seeking declaratory and injunctive relieve to allow them immediate access

**NOTICE OF SUPPLEMENTAL SUPPORT REGARDING DEFENDANT SARA OMUNDSON'S MOTION
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to civil complaint submissions. *Id.* The District Court raised the issue of abstention, but ultimately, did not fully consider the issue because defendants had not raised it themselves. *Id.* at *7 n. 14. The District Court granted defendant's motion to dismiss, finding Courthouse News failed to state a claim upon which relief could be granted. *Id.* at *7. Courthouse News appealed to the First Circuit Court of Appeals. Case No. 21-1624.

The Conference of Chief Justices ("CCJ") filed an amicus curiae brief for the consideration of the First Circuit on Courthouse News' appeal (Exhibit A hereto). The CCJ "was founded in 1949 to provide an opportunity for the highest judicial officers of each State and U.S. Territory to address matters of importance in improving the administration of justice, rules and methods of procedure, and operation of state courts and judicial systems." Ex. A at 13. The CCJ indicated the brief was "filed pursuant to a policy unanimously approved by CCJ's Board of Directors. That policy authorizes the filing of a brief only where critical interests of state courts are at stake, as they are in [that] case. *Id.* at 14.

CCJ argues that "[p]roper application of the principles of comity, federalism, and equity calls for federal court abstention in a challenge to court record rules promulgated by a state's highest court, which has the exclusive authority to establish court rules and oversee a co-equal, centralized judicial system." *Id.* at 14.

The argument and position of the CCJ is significant and supportive of Ms. Omundson's abstention argument for the following reasons:

- 1) As in Maine where the supreme court of that state exercised its inherent, constitutional and statutory powers to manage the state judicial system, here, the Idaho Supreme Court has also exercised its inherent constitutional and statutory powers to manage the

Idaho state judicial system by adopting rules and regulations governing electronic filing (*see e.g.* IREFS 3, 4, 5, and 11) and access to court records (ICAR 32).

- 2) As in Maine, Courthouse News seeks to have federal courts oversee the Supreme Court of Idaho's policy determinations imbedded in these rules by entering an injunction requiring instant access to civil complaints submitted for filing to Idaho's state courts. Dkt. 7.1 at 6 ("Idaho's county clerks are elected officials, who have independent duties and rights conferred by the Constitution of the State of Idaho, state statutes, and Idaho Supreme Court rules.")
- 3) As in Maine, the exercise of federal jurisdiction in this case runs counter to the principles of comity, because it would involve this federal court supervising Idaho's judicial system. Dkt. 7-1 at 6 ("CNS asks the federal district court to issue declaratory and injunctive relief to apply across all of Idaho's state judicial districts s, and to each and every alleged agent, assistant, and employee of Director Omundson.").

Counsel for Ms. Omundson will be able to further address the points made by the CCJ in its arguments on the Motion to Dismiss, which are set for February 18, 2022.

DATED this 10th day of February, 2022.

DUKE EVETT, PLLC

By /s/Keely E. Duke
Keely E. Duke – Of the Firm
Anne E. Henderson – Of the Firm
Attorneys for Sara Omundson

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 2022, I served a copy of the foregoing on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Debora Kristensen Grasham
Katherine A. Keating
Jonathan G. Fetterly

dkk@givenspursley.com
katherin.keating@bclplaw.com
jon.fetterly@bclplaw.com

/s/Keely E. Duke

Keely E. Duke